

A5018B3
TRANSCRIPTS OF PROCEEDINGS MARCH 17, 2011

1 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
2 CENTRAL COAST REGION
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6 CONDITIONAL WAIVER OF WASTE
DISCHARGE REQUIREMENTS FOR ORDER NO. R3-2011-0006
DISCHARGES FROM IRRIGATED LANDS

7 _____
8
9 Transcript of Proceedings, taken at City
10 Council Chambers, 275 Main Street, Fourth Floor,
11 Watsonville, California, commencing at 8:15 a.m.,
12 Thursday, March 17, 2011, before Tonia L. Webb, CSR No.
13 4588.
14

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19 JOHN HAYASHI, Arroyo Grande
20 DAVID T. HODGIN, Scotts Valley
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22 JEAN-PIERRE WOLFF, San Luis Obispo

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1 March 17, 2011 8:15 A.M.
2 PROCEEDINGS
3 CHAIR YOUNG: Good morning, everybody. I'm Jeff
4 Young, chair of the Central Coast Regional Water Quality
5 Control Board. I'd like to welcome everybody to
6 Watsonville for our St. Patrick's Day board meeting on
7 March 17th, 2011.
8 Take roll call this morning?
9 MR. BRIGGS: Yes. Dr. Jean-Pierre Wolff?
10 DR. WOLFF: Present.
11 MR. BRIGGS: Russ Jeffries?
12 MR. JEFFRIES: Russ Jeffries present.
13 MR. BRIGGS: Dr. Monica Hunter?
14 DR. HUNTER: Present.
15 MR. BRIGGS: David Hodgkin?
16 MR. HODGIN: Present.
17 MR. BRIGGS: John Hayashi?
18 He announced yesterday, he's recusing himself.
19 CHAIR YOUNG: Introductions?
20 MR. BRIGGS: Introductions. To my left is
21 Frances McChesney, our counsel from the State Water
22 Regional Control Board. And also from the State Board,
23 seated in the front row is Frances Weber, the liaison,
24 State Board member.
25 Seated next to her on her right is John Muller

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1 from the -- our neighbor to the north, the San Francisco
2 Bay Regional Board, board member, currently chair.
3 CHAIR YOUNG: Region two?
4 MR. BRIGGS: Region two. San Francisco Bay
5 Area Water.
6 And also in the front is Michael Thomas, our
7 assistant executive officer. We have other staff that
8 we'll be introducing as we get into today's item;
9 however, we would like to recognize Harvey Packard and
10 John Robertson in the back of the room there.
11 Harvey, do you have a testimony card?
12 MR. PACKARD: I have a stack back here, yes.
13 MR. BRIGGS: Harvey has a stack of testimony
14 cards that look like this, so if you're interested in
15 addressing the board today -- we just have one item on
16 the agenda today, so that would be pretty clear, but
17 unless you submit a card, then we won't know to call your
18 name.
19 And we have --
20 CHAIR YOUNG: And as to the cards, we want them
21 submitted by 12:00 noon so that when we do get to public
22 comments in the afternoon, I'm going to divide up the
23 time accordingly so that everyone gets the same amount of
24 time so that I can budget the time based on how many
25 cards we have got.

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1 The fewer the cards, the more time each
2 individual speaker will have; the more cards we have, I'm
3 just going to reduce time so that everybody gets an
4 opportunity to address the board.
5 So if you would, please have those submitted by
6 12:00 noon. I would appreciate it.
7 MR. BRIGGS: So additional introductions. This
8 morning we have Madeline Rios and Frank Parcello here.
9 Here's Frank and Madeline's in the booth. And they're
10 here as translators and they'll be making an announcement
11 in Spanish.
12 You can do that now, if you'd like.
13 Thank you very much.
14 Also from the State Board, the office of public
15 affairs, we have Dave Clayburn, who is right over here,
16 and George Cazorco -- I don't know if I said that
17 correctly. There's George right there.
18 And if there are any reporters, any folks from
19 the media that are interested in getting information,
20 there might be information earlier, then you can, at the
21 end of the meeting today -- they would be your first
22 resource in terms of getting some information, so they're
23 to assist us today.
24 And that's it for now.
25 CHAIR YOUNG: Folks, part of the reason for

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1 dealing with the speaker cards before noon and allowing
2 me time to figure out how much each speaker's going to
3 get is, if we have -- that we have to be out of this room
4 by 5:30, so I want to allocate time fairly, and the only
5 way to do that is for me to know how many people want to
6 address the board that are not part of a group already
7 allocated time early on in this proceeding.
8 Most of you haven't met, I don't believe, Dr.
9 Jean-Pierre Wolff. And he is our newest board member.
10 And Dr. Wolff is not going to be participating in this
11 matter.
12 If you want to say a word or two about that?
13 DR. WOLFF: Yes. I'm an agriculturist, one of
14 my professions, and part of my property is a irrigated
15 vineyard, so I will recuse myself from today's
16 discussions.
17 CHAIR YOUNG: You're welcome to be in the
18 audience, you're welcome to join us in the audience.
19 DR. WOLFF: Thank you.
20 CHAIR YOUNG: Okay. Ready to proceed?
21 MR. BRIGGS: We are.
22 CHAIR YOUNG: Item number 14.
23 MR. BRIGGS: Right.
24 CHAIR YOUNG: Okay. Staff recommendation for an
25 updated conditional waiver of waste discharge

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1 requirements for discharges from irrigated lands, draft
2 order number R3-2011-0006.
3 MR. BRIGGS: Yeah. You should read that first.
4 CHAIR YOUNG: Okay. This is the time and place
5 for a public hearing to consider adoption of a waiver of
6 waste discharge requirements for discharges of waste from
7 irrigated lands.
8 This hearing is being held before a panel of
9 members of the Central Coast Regional Water Quality
10 Control Board.
11 I am Jeff Young, chair of the regional board.
12 Also serving on the panel are Russell Jeffries, to my
13 right, and Monica Hunter and David Hodgins, to my left.
14 For your information, board members John
15 Hayashi and Dr. Jean-Pierre Wolff have a conflict and may
16 not participate in this matter as board member in
17 accordance with state law.
18 The official record of the testimony at this
19 hearing will be created by our court reporter. We are
20 also using a tape recorder and video tape recording
21 today, but the recordings will not be the official record
22 of the hearing.
23 At the end of this hearing today, I will close
24 the record in this matter and this panel will discuss and
25 arrive at a proposed recommended decision. This panel

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1 will make a recommendation that will be presented to the
2 regional board at a future meeting, when the board has a
3 quorum that can act on this matter.
4 You will be notified of the date and location
5 of that hearing. At that time, the full board may adopt,
6 reject or modify the recommendation of this panel.
7 Absent extraordinary circumstances, you will not have
8 another opportunity to provide argument or evidence to
9 the full board.
10 Thus, you are encouraged to present today all
11 the evidence that you would like this panel or the full
12 board to consider. If anyone in the audience wishes to
13 address the panel today, please promptly fill out a
14 speaker card and hand it to the clerk.
15 To allow time for board panel deliberation, I
16 will limit the time for speakers, if necessary. I have
17 allowed extra time to those persons who have requested
18 extra time in advance, as set forth in the public notice
19 for this item.
20 The rest of the public will have up to three
21 minutes, but it may be less, depending on the number of
22 speakers.
23 If you wish to speak, please submit a speaker
24 card that are available at the back of the room. I will
25 accept speaker cards until noon.

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1 Following the lunch break, I will announce the
2 account of time I will be able to allocate to public
3 speakers. Please summarize your comments and avoid
4 repetition. The board members have fully reviewed the
5 written submittals and will consider all comments.
6 The hearing will proceed as follows:
7 Regional board staff will go first, followed by
8 elected officials. They'll have three minutes each. The
9 Farm Bureau Panel will have 55 minutes.
10 California Strawberry Commission will have 15 minutes.
11 Coast Keeper will have 24 minutes. Environmental Justice
12 Coalition for Water, 12 minutes. Coastal Alliance, 8
13 minutes. Channel Keeper, 12 minutes. Central Coast
14 Alliance for Sustainable Economy, 8 minutes.
15 And then we'll have public comments and we'll
16 see whether we have few enough people that everyone would
17 have three minutes or am I going to have to cut that back
18 down. I won't know at this point.
19 Closing statement of the Farm Bureau, 5
20 minutes.
21 After the conclusion of testimony and comments,
22 staff will be provided an opportunity to summarize and
23 make a recommendation. A timer will be used. To allow
24 for the orderly conduct of the hearing, I request that
25 you end your comments when your time is complete.

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1 We will begin with staff's presentation.
2 Mr. Briggs.
3 MR. BRIGGS: Thank you, Mr. Chairman. Those --
4 those times that Chair Young just listed add up to about
5 two hours and twenty minutes, I believe. And with the
6 staff presentation, that -- and even without interruption
7 of those times for Board questions and answers -- that
8 will take us pretty close to noon.
9 So it looks like our individual speakers will
10 be in the afternoon.
11 And I want to make a couple other
12 announcements, since we're getting a pretty good-sized
13 crowd here. For those folks that are standing in the
14 back, there are a lot of seats available. I see seats
15 here and seats over here. So, unless you want to stand,
16 there are seats available.
17 And if we do get filled up, and if folks don't
18 want to stand in the back, we have a room next door, and
19 I understand there's audio available over there.
20 So in -- and, actually, if you folks and staff
21 could help out if we do get people coming in, obviously
22 after this announcement, if you could let them know that
23 that's available, we'd appreciate that.
24 Also, the City of Watsonville, whose facility
25 we're using today -- and I should have introduced Irwin,

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1 who's helping us out down here in the City of Watsonville
2 - the city has waived their parking fee for today so --
3 now we tell you.
4 I was -- I was hoping there was a little sign
5 on the machine down there, but maybe not.
6 Anyway, that's -- thank you for making your
7 donation to the City of Watsonville.
8 And -- let's see. That's it for logistics.
9 So as Chair Young said, this item that we have
10 today -- and, by the way, we had the rest of our -- our
11 board meeting with our items yesterday afternoon so that
12 we could devote the day today, as much time is necessary,
13 to this one item, very important item.
14 So, like I said, make sure you get your
15 testimony cards in. And, as the Chair said, we'll cut
16 those off at noon. So, again, if you could help out with
17 that. If people come in and sit next to you, you might
18 mention that to them, in case they get by without getting
19 a testimony card.
20 This -- this item for updating this order for
21 irrigated ag is a process that we actually started about
22 two and a half years ago. And in trying to formulate a
23 process for that, we sent out our first letter on it in
24 December of '08, I think it was. That's two and a half
25 years ago.

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1 And so I won't -- I won't go through the whole
2 process. Actually, Lisa McCann is going to talk about
3 the process that we've used, a little bit, in the
4 presentation.
5 But I just want to point out this has been a
6 very lengthy process. The board itself has had two large
7 formal workshops; one in the north, one in the south; an
8 additional workshop at the regular board meeting in
9 February, and a huge amount of comments and a lot of
10 changes in the -- in the orders as we've gone along in
11 terms of what we have a draft today.
12 But we'll be getting into the details of that.
13 But today -- today's meeting is consistent with the
14 schedule that we discussed late last year, in terms of
15 how we would roll this out. And that was discussed in
16 the board meetings with the board and with the public.
17 And so we're on track in terms of what we said
18 we would be doing with consideration today of the kind of
19 -- the fly in the ointment is that we don't have a quorum
20 today. So today's meeting is being held as a panel
21 hearing of the board. And then, once we have a full
22 board with a quorum, the recommendations of the panel
23 would go to the full board.
24 The new board member or members would review
25 the record, in order to be able to vote on the -- on the

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1 item.
2 This -- this issue is unique, really, in terms
3 of the typical items that we deal with. And it's unique
4 in terms of the -- the number of parties; although we do
5 have programs that have actually thousands of parties,
6 whether it's the underground tanks program, storm water
7 program.
8 But it's -- it's unique in terms of the water
9 quality issues, groundwater, as well -- as well as many
10 aspects of surface water, and the variation and the
11 practices that are involved with agriculture, with the
12 different climates, soil crops and -- and all those sorts
13 of variables.
14 So it is kind of unique, in terms of the scope
15 that we have to deal with; both in terms of what's
16 happening on the ground and then the -- what -- what's
17 appropriate in terms of regulatory framework.
18 Because of that, the broadness of the issue, we
19 have several staff here today because we -- over this two
20 and a half years, we've had several staff who have dealt
21 with various aspects of this very broad issue, and have
22 different levels of expertise. And so we decided it
23 would be a good idea for those staff to join us today
24 and, if necessary, to provide more detailed answers to
25 questions, and they will be available.

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1 So those -- those staff are -- I already -- I
2 already mentioned Harvey Packard. He's supervising water
3 resource control engineer and our enforcement
4 coordinator.
5 Karen Worcester is our environmental scientist,
6 who manages our ambient monitoring program and CCAMP,
7 Central Coast Ambient Monitoring Program. Of course,
8 we've -- we've relied a lot on CCAMP data and then -- and
9 then subsequent and concurrent cooperative monitoring
10 program data for our water quality information for this
11 program. Karen's right there.
12 Matt Keeling is a water resource control
13 engineer in our permitting unit. He's been working on
14 groundwater quality, monitoring and recording. That's
15 right there.
16 Dean Thomas has worked in our groundwater
17 cleanup program. And he's here about groundwater quality
18 and recording. He's right there.
19 Monica Barricarte -- you're hiding behind Karen
20 - water resource control engineer, works in our
21 agricultural regulatory program. So she works in the --
22 in the program full time. And she's worked on nitrate
23 load reduction, irrigation and nutrient management.
24 Dominic Roques -- is Dominic here? There's
25 Dominic -- is engineering geologist, works in our storm

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1 water program, focusing on hydro modification and the
2 riparian protection issues. And he's available for
3 questions about the cost information that we developed.
4 Jill North is seated next to Dominic,
5 environmental scientist. And she is here on the riparian
6 and aquatic habitat protection issues.
7 Shanta Keeling, over on the end, water resource
8 control engineer in our total maximum daily load, or
9 TMDL, unit. And she worked on the CEQA, California
10 Environmental Quality Act documents.
11 And then, additionally, Hector Hernandez is in
12 the back of the room; Corinne Huckaby -- there's Corinne
13 - Steve Saiz, in the back there helping out with
14 information management and other logistics.
15 Also both Hector -- Hector Hernandez and Harvey
16 Packard can assist Spanish-speaking members of the
17 public. And I haven't verified this, but I understand
18 our translators will also be available to assist at the
19 podium, if that's necessary.
20 So for our presentation today, in terms of
21 staff presentation, Michael Thomas is going to be
22 providing the opening remarks.
23 And do we -- we have a -- oh, we do have
24 something on the screen. That's good. We were having a
25 little trouble getting that going.

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1 Michael is a -- an engineer with the board, who
2 has worked for the board since 1985, and has worked in
3 both surface and groundwater issues, including issues
4 having to do with agricultural impacts, notably in the
5 Elkhorn Slough watershed area. And he's going to be
6 starting off.
7 Lisa McCann is actually third up. But Lisa is
8 our -- she's seated next to Michael -- she's our
9 environmental program manager and manages our watershed
10 protection and planning section. And that section
11 includes storm water, riparian and wetlands protection,
12 regional monitoring assessment and planning. And she's
13 been working with the board -- our board -- since 1995.
14 She worked in the Morro Bay watershed and in
15 the Monterey Bay National Marine Sanctuary agriculture
16 and rural lands plan programs. She's also worked on many
17 erosion control, irrigation and nutrient management --
18 best management practices.
19 She became our region's non-point source
20 program manager, and led the development of many total
21 maximum daily load plans.
22 These programs and activities involve working
23 with agriculturists to improve water quality information
24 management practices, to reduce pollution loading and to
25 establish more accountable regulatory options.

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1 And, lately, she's been co-managing the
2 development of this order with Angela Schroeter. So
3 Angela is seated next to her. She's a senior engineering
4 geologist. She manages our agricultural regulatory
5 program within Lisa's section.
6 She came to the board in 2006 from -- from --
7 with the State Board, and has managed the grants program
8 over at the TMDL program. She worked for ten years at
9 the State Board, where she developed and managed the
10 groundwater ambient monitoring assessment program, or
11 GAMA. And worked in several groundwater regulatory
12 programs.
13 And, like I said, we're going to be starting
14 off with Michael Thomas, who's going to provide the
15 opening remarks and the overview. That'll be followed by
16 Angela with a -- a brief summary of the order and what it
17 entails.
18 Lisa's going to cover public comments and
19 responses. And then Michael will provide our preliminary
20 conclusion, at this point. Michael Thomas.
21 MR. THOMAS: Thank you, Roger.
22 Good morning, Mr. Chairman, members of the
23 board.
24 One of the things that has come up over and
25 over again in the past two and a half years that we've

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1 been working on this project is this concept of fairness.
2 And what fairness means depends on who you're
3 talking to. Some people believe that fairness is
4 recognizing that every individual is unique and that
5 everyone should be treated as a unique individual. Other
6 people say that fairness is treating everyone the same.
7 It also depends on who you are. If you're a
8 farmer struggling to make a living today in this
9 environment of increasing regulations from multiple
10 agencies like ours, or if you are a fisherman who's --
11 like this photograph here -- someone who's fishing in Oso
12 Flago Lake, that lake is now posted because of the
13 contamination in fish tissue due to pesticides, or if
14 you're a person who's relying on groundwater as a
15 drinking water source, and that water is contaminated,
16 picture can look very different.
17 So we have a lot of stakeholders involved in
18 this process with very divergent views; much more so than
19 on many of our other projects -- most of our other
20 projects -- and much more so than the -- when the board
21 adopted the 2004 conditional waiver.
22 And that is by design. We have tried to bring
23 as many stakeholders into this process as possible. But
24 in -- in doing that, we obviously raise this issue of
25 fairness and we -- more controversy comes to the surface

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1 because of that.
2 So for context, I wanted to talk to the board
3 about relative degree of regulation. What are we
4 actually talking about here compared to other programs?
5 And I think you've seen this graph before. We've --
6 we've showed it to the board before. So I just wanted to
7 remind you of this.
8 As far as relative degree of regulation, timber
9 harvesting is one of the least regulated programs that we
10 -- that we have, as far as degree of regulation or
11 comprehensiveness of the regulations, and -- and it's
12 decreasing. The -- that arrow indicates -- indicates
13 that our direction, as far as oversight of timber
14 harvesting, has been decreasing over the past several
15 years.
16 Urban storm water is more comprehensive, in
17 terms of our oversight and regulations, and that has been
18 increasing over the past several years, as you know,
19 because the board has spent so much time on it.
20 Municipal waste water is one of the most highly
21 regulated activities that this board oversees. Drinking
22 water pollution cases are also heavily regulated. For
23 obvious reasons, they present a major threat to public
24 health.
25 Landfills are also heavily regulated; though,

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1 in comparison, the 2004 conditional waiver is at the low
2 end of the scale. When you compare the requirements or
3 the conditions in the 2004 conditional waiver to all of
4 the board's other programs, it is one of the least
5 comprehensive or the least burdensome of our regulations.
6 And we also have to look at the relative degree
7 of water quality impacts from these different activities.
8 Timber harvesting is very low because of the way it's
9 done in our region. In other regions there are major
10 impacts -- environmental impacts -- due to timber
11 harvesting. But here it's relatively low because of the
12 type of timber harvesting that is done. It's very
13 selective.
14 Landfills represent a medium threat to water
15 quality today because of the regulation that the board
16 has imposed. For instance, all landfills have to be
17 designed, they have to have adequate caps, they have to
18 have adequate lining.
19 Municipal waste water also has a medium degree
20 of water quality impact compared to other programs;
21 again, because of the degree of regulation. There are
22 some serious issues associated with municipal waste
23 water, like contaminants -- emerging contaminants of
24 concern, such as, endocrine disrupters.
25 Urban storm water presents a relatively high

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1 threat to water quality. We're seeing whole watershed
2 impacts or potential impacts from urban storm water, and
3 that is why we are increasing our regulation and
4 oversight.
5 Drinking water pollution cases, even though
6 they're heavily regulated, they still represent a major
7 quality impact and human health threat.
8 Irrigated agriculture on this scale is at the
9 top of the scale. The water quality impacts due to
10 irrigated agriculture are the most serious and severe
11 impacts that we deal with as an agency.
12 The question now is:
13 Where does the 2011 draft order fall into place
14 here on that top scale?
15 It falls into place here. Tier -- as you know,
16 the order has three tiers, and each tier has a different
17 degree of regulation.
18 Tier 1 is the least, Tier 2 is in the middle,
19 Tier 3 is the highest. Tier 1 is slightly less than the
20 2004 conditional waiver. Tier 2 is similar to the 2004
21 waiver, but has some additional requirements. And we're
22 going to be talking about those, and those are highly
23 controversial.
24 Tier 3 has more significant requirements
25 because those dischargers represent the greatest threat

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1 and greatest impact to water quality.
2 So it's important to realize where that 2011
3 order is. I imagine if you're on the receiving end of
4 it, it does not seem like you're at the lower end of this
5 scale, it seems like you're at the other -- the upper end
6 of this scale. But compared to our --
7 (Interruption)
8 MR. THOMAS: Because of the microphone or
9 because of their talking? Okay.
10 Okay. So that's the context. And I want to
11 talk a little bit about some of the water quality
12 problems we have in our region.
13 We do have some of the most severe pollution in
14 the United States, here on the Central Coast. And this -
15 - the -- the information and the realization of this
16 pollution is not new.
17 A report was published in 1988 by the Monterey
18 County Flood Control and Water Conservation District.
19 It's called Nitrates in Groundwater, Salinas, California.
20 And it concludes some significant -- or has some
21 significant conclusions.
22 One is that nitrate contamination poses a
23 substantial threat to this industry. The re -- report
24 talked, at length, about nitrate contamination in
25 groundwater. And these are quotes from this report.

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1 It also concluded that drinking water is
2 considered the highest beneficial use of water. That
3 sound familiar. That's -- our agency agrees with that,
4 and that's one of our highest priorities.
5 Nitrate removal from drinking water supplies is
6 costly, and we agree. That's documented in our staff
7 report and in the order. And the State maintains a non-
8 degradation policy.
9 If additional wells go out of production, the
10 nitrate situation will become critical. And it is
11 anticipated that additional regulations will be imposed.
12 They also concluded that specific actions are needed to
13 mitigate existing problems, and to reduce the potential
14 future problem.
15 And the situation will merit a dedicated effort
16 and special attention by the leadership in the county and
17 around the state. If it is ignored, it will not go away.
18 Back in 1988 we recognized -- and other
19 agencies recognized -- the significance of this pollution
20 problem.
21 And I think that first quote is one of the most
22 important, where they're saying that nitrate poses a
23 substantial threat to the industry itself. And I think
24 the industry is aware of that, and has become much more
25 aware of that over the past few years.

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1 Fast forward over 20 years, this is the
2 condition that we have today in the lower Salinas Valley
3 with respect to public water supply wells.
4 Pie chart -- I'm sorry, you can't see the --
5 the red very well on this screen that the -- that the
6 public is looking at. But it shows that 23 percent of
7 the wells in the lower Salinas Valley are contaminated
8 with nitrates and another 37 percent are affected by
9 nitrates.
10 The -- the -- the 37 percent that's in yellow
11 here, concentration of nitrate is just below the drinking
12 water standard, and it is increasing. This
13 underestimates the actual threat to drinking water
14 supplies because these wells tend to be deeper wells;
15 they're not the domestic wells that are in shallow water.
16 In the Santa Maria area, we have the same
17 situation. Twenty-seven percent of the water supply
18 wells are contaminated with nitrate.
19 And, by the way, this water has to be treated
20 before it's provided to the public, and is treated. So
21 from these wells people are not drinking contaminated
22 water. That water has to be treated or blended.
23 Forty percent of the wells are just below the
24 drinking water standard, and those concentrations are
25 rising.

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1 Many of these wells that you see in red here on
2 both these maps -- on the Salinas map and the Santa Maria
3 map -- have been abandoned, and they've had to drill new
4 wells to deal with this nitrate problem. As I said, the
5 -- those -- that data underestimates the problem.
6 Domestic wells pull from shallow water. And we
7 have over 44,000 domestic wells on the Central Coast.
8 Many of these domestic wells are in irrigated ag areas,
9 where we have these high concentrations of nitrate in
10 groundwater. We don't know how many people are currently
11 drinking contaminated water from these wells.
12 But this is our highest priority -- staff's
13 highest priority, and something that we are taking action
14 on right now. I think you heard a little bit about this
15 yesterday. Some of the actions that we're taking are
16 identifying the high-risk areas -- we actually have
17 identified the high-risk areas.
18 We are currently identifying homeowners in
19 those areas, so that we can send notices to them about
20 the threat to water quality and options that they have
21 for dealing with it, including treating -- getting
22 treatment for their own water and sampling for their own
23 water.
24 We're also developing a well testing program to
25 help the homeowners get their water tested so they know

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1 what the quality is.
2 We're also pursuing alternative water cases;
3 meaning, we're -- in areas where we know there are high
4 levels of contamination in shallow groundwater, where
5 people are using that water, we're looking at the
6 sources; and, in the future, we'll be bringing cases to
7 the board, where we'll be recommending that the
8 responsible parties provide alternative water to the
9 homeowners. As the board has done in other drinking
10 water contamination cases.
11 The human health impacts due to nitrate are
12 serious. You've heard about blue baby syndrome before,
13 that's well documented.
14 There's also growing evidence of other risks,
15 including cancer, thyroid inhibitions, Parkinson's,
16 diabetes and endocrine system disruption.
17 The costs are astronomical, in terms of
18 treating nitrates. Water purveyors -- we've met with
19 water purveyors, and they've talked to us about the costs
20 that they are having to deal with are in the millions of
21 dollars for small communities.
22 And the water purveyors are routinely going to
23 the Public Utilities Commission, and asking for rate
24 increases to deal with the treatment or the need to drill
25 new wells. So they have to pass the cost on to the

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1 users.
2 Now I'm going to switch to surface water, talk
3 about that -- the conditions of surface water briefly.
4 This is a map of the Monterey area. You see the Elkhorn
5 Slough, Castroville and Salinas, Salinas River and the
6 reclamation dis -- ditch.
7 In the old Salinas River area is here, we have
8 some of the highest concentrations of nitrate in surface
9 water for any river of lagoon system known in the
10 literature, and they're increasing. They've been
11 increasing for the past several decades, have been
12 increasing over the past decade.
13 The Elkhorn Slough area is heavily impacted by
14 nitrates and nutrification and cascading biological
15 impacts that occur there because of nutrients coming into
16 the -- into the slough.
17 There's a report published in 1996 by the
18 Elkhorn Slough Foundation and the Elkhorn Slough Estuary
19 and Research Reserve, and their conclusion was that in
20 1996 that there has been a significant increase in
21 nitrate concentration since the '70s, and they have
22 extraordinarily high nitrate concentrations in the lower
23 Salinas River, which may be the highest recorded in
24 scientific literature for a river or estuary.
25 And, as I mentioned, these concentrations are

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1 still increasing. There are multiple organizations
2 monitoring this area. This data is from the Monterey Bay
3 Aquarium Research Institute, and it shows increasing
4 concentrations from 2004 to 2011.
5 That data is very similar to the water board's
6 own data, which we collect through the Central Coast
7 Ambient Monitoring Program.
8 This is the Salinas River showing nitrate
9 concentrations increasing over time. This is the Old
10 Salinas River. The red line is the drinking water
11 standard of 10, and you can see the -- the concentrations
12 are over 60, or five times the drinking water standard.
13 They're also 50 times the aquatic index
14 standard of 1 milligram per liter. And we see biological
15 impacts, where the concentrations in surface waters
16 exceed 1 milligram per liter. So these are 60 times that
17 amount. And it's the same situation in multiple places
18 around our region.
19 This is Quail Creek. You can see
20 concentrations -- surface water concentrations of up to a
21 hundred milligrams per liter, 10 times the drinking water
22 standard.
23 Natividad Creek also up almost a hundred
24 milligrams per liter
25 Blanco Drain, over a hundred and 50 milligrams

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1 per liter in some cases.
2 Santa Maria River -- moving down south -- we
3 also see very high concentrations in the Santa Maria
4 River estuary; again, around a hundred milligrams per
5 liter.
6 Orcutt Creek, upstream of Santa Maria River,
7 very high concentrations, some -- up to a hundred
8 milligrams, actually exceeding it in one case. We have
9 very, very high concentrations of nitrates in irrigated
10 ag areas around our region.
11 In addition -- this is again moving down south
12 -- Oso Flaco Lake, we have the highest tissue
13 concentration of dieldrin and DDT in the United States,
14 several times higher than the average concentration
15 elsewhere in the United States.
16 We posted that lake for health warnings, so
17 that people that are fishing there are aware of that.
18 We have more recent data that -- I do not have
19 the actual numbers here for you, but there's more recent
20 data showing that we also have problems with currently
21 used pesticides in fish tissue in the -- in Oso Flaco
22 Lake.
23 We also have ongoing sedimentation and fish
24 tissue contamination in other parts of the state and
25 toxicity problems due to pesticides.

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1 2010 state report on toxicity in California
2 waters shows that the Central Coast streams have the
3 highest percentage of toxic sites statewide. Fifty-six
4 percent of our sites are toxic, 22 percent are highly
5 toxic. Highly toxic just means much more toxic than
6 average.
7 And the reason why we have this toxicity -- one
8 of the reasons why is that - the amount of chemicals
9 that are used in our region.
10 It is obviously one of the most productive
11 agricultural regions in the world, and that requires
12 these chemicals -- that yield requires these chemicals.
13 A DPR study showed the -- DPR is the Department
14 of Pesticide Regulation. Their statewide study showed
15 that the Salinas River area had the highest percent of
16 study sites with pyrethroid detections, the highest
17 percentage of sites exceeding toxic levels, and the
18 highest rate of active ingredients applied, 113 pounds
19 per acre, which is three times as much, as compared to
20 other areas in the state.
21 We have serious problems with toxicity, but we
22 also have overall water quality problems with surface
23 waters. This -- this is the -- an image from our CCAMP
24 site from the -- from the water board's data, which you
25 can find on-line.

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1 The dark red areas are the most intensely
2 impacted for the list of parameters that you see there;
3 nitrates, ortho-phosphates, dissolved oxygen turbidity,
4 nitrates, et cetera.
5 So it's much more than a toxicity problem. We
6 have an overall biological degradation problem. And the
7 most severely degraded areas coincide with our irrigated
8 agricultural areas.
9 This is why we need to renew the 2004 order.
10 We need to address these water quality problems, and we
11 need to demonstrate tangible improvements in these areas
12 in the amount of pollution being discharged and in the
13 concentrations in the receiving waters overall.
14 While reviewing the 2004 conditional waiver,
15 the very first finding of the order is this:
16 The intent of this conditional waiver is to
17 regulate discharges from irrigated lands to ensure that
18 such discharges are not causing or contributing to
19 exceedences of any regional, state or federal numeric
20 water quality standard.
21 That's not new. That's the first finding in
22 the 2004 order. So the concept of having to comply with
23 water quality standards is not new. This is also in the
24 2011 proposed order that's in front of you.
25 Finding 16 of the 2004 conditional waiver said

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1 this:
2 Although time will be allowed, increased
3 reporting and monitoring may be required in order to
4 ensure that water quality is improving, as what we are
5 doing with the 2011 proposed order.
6 Now I'm going to build on the 2004 order. And
7 this is one of the things that people said to us
8 repeatedly. The board said this to us and many of the
9 stakeholders said to us, is that we should be building on
10 the 2004 order, not simply abandoning it. And we agree.
11 So here is a list of the content of the 2004
12 order, in terms of its conditions and its findings. I
13 already mentioned the 2004 order requires that
14 dischargers meet water quality standards.
15 They also had to file a notice of intent, which
16 is an intent to enroll in the 2004 order, and it
17 describes their farming operation.
18 Dischargers needed to develop a farm plan, and
19 that farm plan had to have several elements:
20 An irrigation management element, a pesticide
21 management element, a nutrient management element, an
22 eroding management element, all had to be included in the
23 farm plan, that is the definition of the farm plan in the
24 2004 conditional waiver.
25 Farm plan also had to include schedules to

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1 implement those management practices. It also included a
2 requirement or a condition to submit a management
3 practice checklist, which was a form submitted to the
4 water board which checked off the management practices
5 that were being implemented at each farm.
6 It also included a requirement for surface
7 water monitoring, and a requirement for education.
8 Now I'm going to add a few things to this list,
9 and they'll be in yellow, the yellow text below:
10 Groundwater requirements, backflow prevention
11 -- which means modifying a well so that pollution cannot
12 travel back down into the well and contaminate
13 groundwater and annual compliance information that must
14 be submitted on-line; not submitted to the -- not
15 submitted to the board like this, but submitted to the
16 board on-line via a form that growers would fill out.
17 And I'll show you that in a few minutes.
18 Now if you look at the top of this list, it
19 says 2004 conditional waiver. I'm going to change the
20 title. So watch the title. Don't blink or you'll miss
21 it. I'm going to change it.
22 This is now Tier 2 of the 2011 order. This is
23 the order that's in front of you today. This is Tier 2.
24 It builds on the 2004 waiver, and we've added some
25 requirements.

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1 Notice that the management check -- the
2 management practice checklist is crossed out. That's no
3 longer part of the order because growers will be
4 submitting information on-line.
5 Specific information and specific fields at --
6 with -- they'll be answering specific questions about
7 their actions to implement management practices and the
8 effectiveness of the practices.
9 So if this is Tier 2, what is Tier 3? Tier 3
10 is Tier 2 plus some additional conditions and
11 requirements. Tier -- Tier 3 includes a water quality
12 buffer plan for some dischargers; individual monitoring,
13 which means they have to monitor their runoff; an
14 irrigation and nutrient management plan that is more
15 comprehensive than the requirements for Tier 2; and time
16 schedules.
17 And we'll be talking about each of these in
18 more detail in a few minutes. Lisa and Angela will be
19 talking about these.
20 And what is Tier 1? Tier 1 is Tier 2 minus the
21 annual compliance info. Growers in Tier 1 do not submit
22 information to the board on-line in this form that I'll
23 be talking about, which we think is -- is a significant
24 reduction in burden from Tier 2.
25 Tier 1 has approximately 500 growers and about

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1 92,000 acres, which represents 21 -- 21 percent of the
2 overall acreage. Tier 2 includes about 1200 growers,
3 about 25 percent of the acreage. Tier 3 is about a
4 hundred growers, represents 54 percent of the acreage at
5 about 233,000 acres.
6 This is an illustration of the documentation --
7 the hard copy documentation that growers will have to
8 submit to the water board. There aren't any. They will
9 submit no hard copy documents to us. All the information
10 submitted to the board will be on-line in the forms that
11 I'll be showing you.
12 One of the comments that we've had is that
13 growers would have to produce documents like this by the
14 hundreds or thousands and sub -- submit them to the
15 board, and its staff would have to review all of them.
16 Not the case. There will be no hard copies
17 submitted to the board. Information will be submitted
18 on-line into a database. And we'll be managing the
19 database, which is how we manage programs with many, many
20 growers. We can't do it in this form.
21 It has to be done in a -- it has to be done in
22 a database form.
23 What is the annual compliance form? It is very
24 similar to the notice of intent -- the on-line notice of
25 intent that we developed several months ago that the vast

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1 majority of growers have now filled out. They went on-
2 line, filled out the information and we now have that
3 database.
4 We will modify that notice of intent, depending
5 on what the board adopts. If the board adopts the order
6 that is in front of it today, we will modify this form
7 according to the current order -- the draft order. If
8 you change the order, we'll modify it according to the
9 changes that you make.
10 But what we will do is add fields with specific
11 questions, and the growers will answer those questions
12 and submit the information under penalty of perjury.
13 Here's an example of some of things that
14 growers will submit to us, the kind of information they
15 will submit, on this form on-line. All -- I'm not going
16 to read all of these to you.
17 You can see that the -- just the type of
18 information that they will submit. So all Tier 2 and
19 Tier 3 dischargers must submit information like the date
20 of the completed farm plan, the type and characteristics
21 of their discharge or discharges, identify direct
22 agriculture discharges to a waterbody, et cetera. So
23 they will be submitting information on having done these
24 things.
25 A subset of Tier 2 and Tier 3 will do photo

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1 monitoring, and submit that on-line. They will also
2 submit information on the total nitrogen applied at their
3 operations.
4 A subset of Tier 3 will, in addition to the
5 items above, submit proof of a certified irrigation
6 nutrient management plan and elements, and a water
7 quality buffer plan.
8 All of that information will be submitted
9 on-line in a form like this. We'll have pull-down menus
10 so it'll be direct and straightforward. You'll answer
11 specific questions, and answer the information in
12 response to those questions.
13 And, as I mentioned, it -- the form will be the
14 very same type of form as the notice of intent, which
15 we've already developed, and the vast majority of growers
16 have already used.
17 CHAIR YOUNG: Question for you, Michael, before
18 you switch screens. Are you proposing to have any
19 explanatory material that is connected to the compliance
20 form? Like an example of how to estimate acres just
21 discharging to ditches or any other type of --
22 MR. THOMAS: Yes.
23 CHAIR YOUNG: -- surface discharge?
24 MR. THOMAS: Yes. For example --
25 CHAIR YOUNG: For example.

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1 MR. THOMAS: -- there will be a question and
2 then for example.
3 CHAIR YOUNG: Okay.
4 MR. THOMAS: This is the type of information
5 that the grower would provide.
6 CHAIR YOUNG: Okay.
7 MR. THOMAS: Yep.
8 Now I'm going to hand it over to Angela
9 Schroeter, and she's going to go into more detail about
10 some elements of the order that's in front of you today.
11 MR. BRIGGS: Before Angela starts -- or while
12 you're switching programs there, couple other things.
13 Anyway, there are more people standing in the
14 back now. So I see about nine empty seats down here on
15 this side, and I see a couple over here. Maybe you could
16 raise your hand if you have an empty seat next to you,
17 please.
18 There are quite -- there are probably a dozen
19 seats available, if you'd like to sit down. And then,
20 for those of you coming in later, if we do run out of
21 seats, there's -- there's room next door.
22 I missed a couple of staff that I should've
23 introduced. Dave Paredes (phonetic) is seated next to
24 Karen Worster, there. As I mentioned, Karen's our CCAMP
25 program manager, Central Coast Ambient Monitoring

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1 Program.
2 And Dave provides a lot of help in developing
3 that program, maintaining that program.
4 And thanks for assisting, Dave, as always.
5 Seated next to him is Chris Rose, of our staff,
6 who is our program manager for -- and section leader --
7 unit leader for total maximum daily loads, TMDLs. Sorry
8 I missed you the first time.
9 And then another thing I missed is that we had
10 supplemental sheets that we provided for this item. So
11 those are materials that went out after the agenda itself
12 was prepared. I'll just mention what those are.
13 There's one that's dated March 4th, that's a --
14 a summary of comments and responses. And then it
15 references Appendix E, which was on -- on our web site.
16 And it has more detail on the comments and responses.
17 That also included Appendix D, which was the
18 options considered. And then the last part of that same
19 March 4th supplemental sheet had a few corrections that
20 we noted that need to be made to the draft order.
21 And then March 9th a separate supplemental
22 sheet is a memo from Harvey Packard regarding enforcement
23 perspective.
24 So just wanted to mention that those were part
25 of our -- our record of materials today.

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1 So Angela Schroeter is up next.
2 MS. SCHROETER: Good morning. My name is
3 Angela Schroeter, and I'm a senior engineering geologist
4 and program manager of the agricultural regulatory
5 program.
6 As Michael mentioned, I'm going to provide you
7 with additional background on staff's recommended draft
8 agricultural order. In my presentation, I will discuss
9 the tiers in the draft order, the tiering criteria, and
10 summarize key word conditions.
11 I will also provide you with an example of how
12 the draft order considers a variety of information and
13 factors to focus on the most important details to best
14 protect water quality, while taking into account water
15 quality priorities, local conditions and the
16 characteristics of individual farming operations.
17 This is an image of the Central Coast Region --
18 oops -- sorry. Oop -- what am I doing here?
19 This is an image of the Central Coast Region.
20 There's approximately 435,000 acres of irrigated
21 agriculture. And currently approximately 1700 farming
22 operations are enrolled in the current agricultural
23 order.
24 A farming operation can have multiple
25 individual farms. The 1700 farming operations enrolled

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1 in the current agricultural order -- oops -- are
2 represented by more than 3,000 individual farms, which
3 are shown here as green dots.

4 Each individual farm has very site-specific
5 characteristics that affect the level of waste discharge
6 and threat to water quality. For example, each
7 individual farm has a different size, setting and
8 location.

9 In addition, each farm grows different crops,
10 uses different types and amounts of fertilizers and
11 pesticides, employs different types of irrigation, and
12 implements different management practices.

13 The challenge is how to consider these multiple
14 factors, which are unique to individual farms and best --
15 best protect water quality.

16 As with any other water board program or
17 general order, the draft order simplifies this complex
18 situation by focusing on the most important details.

19 Early board feedback and public input indicated
20 that individual farming operations are unique; that the
21 requirements should not be one-size-fits-all; and that
22 staff should consider a tiered approach in the draft
23 order.

24 The draft order has three tiers. The tiers are
25 based on level of waste discharge and threat to water

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1 quality. The draft order includes increased requirements
2 for discharges with the highest level of waste and
3 greatest threat to water quality in the most impaired
4 areas.

5 The draft order also recognizes that there are
6 some dischargers, especially smaller farms, who may
7 present a very low to minimal threat to water quality.
8 In response to the severity and magnitude of water
9 quality conditions in the Central Coast region, the draft
10 order tiers are based on the following five criteria:

11 Crops known to have higher nitrate-loading
12 impacts; chemicals known to cause significant pollution
13 -- for example, chlorpyrifos and diazinon; proximity to
14 an impaired waterbody or public water system well;
15 discharge to a toxic or pesticide-impaired waterbody; and
16 size of the farming operation.

17 Tier 1 operations represent the lowest threat
18 to water quality. The Tier 1 criteria include:

19 The operation does not use chemicals known to
20 cause toxicity or pollution in surface waters, such as
21 chlorpyrifos and diazinon; the operation is not located
22 within a thousand feet of a surface waterbody impaired
23 for toxicity, pesticides, nutrients, sediment or
24 turbidity.

25 If growing crops that have a high

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1 nitrate-loading risk, then the operation must be less
2 than a thousand acres, and not within a thousand feet of
3 a polluted public well.

4 Alternatively, a vineyard could qualify for
5 Tier 1 if the operation is certified as sustainable in
6 practice. The reason why staff characterizes sustainable
7 in practice certified vineyards as low threat is because
8 a SIP certification requires and verifies implementation
9 of specific management practices that protect water
10 quality.

11 For example, the SIP certification requires a
12 25-foot buffer along streams and creeks.

13 Tier 2 operations represent a moderate threat
14 to water quality, and the criteria include:

15 The operation uses chlorpyrifos or diazinon;
16 the operation is located within a thousand feet of a
17 surface water pot -- waterbody impaired for toxicity,
18 pesticides, nutrients, sediment or turbidity; operations
19 that grow crops that have high nitrate-loading risk
20 within a thousand feet of an impacted public well, but
21 are less than a thousand acres.

22 Tier 3 op -- operations represent an increased risk
23 to water quality. And the criteria include:

24 Operations that have crops that have ni -- high
25 nitrate-loading risk and are greater than a thousand

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1 acres; operations that use chlorpyrifos or diazinon and
2 that discharge to a surface waterbody impaired for
3 toxicity or pesticides.

4 So let me provide you with an example. In the
5 next few slides, I will show you specific information to
6 demonstrate how the draft order takes a large number of
7 farms, each with different characteristics, and employs a
8 tiering approach that is both reasonable and responsible
9 given the severity of water quality conditions in the
10 area.

11 The data I'll be showing you is from operations
12 in the lower Salinas area. And it's based upon the
13 information submitted by farmers as part of the recent
14 2011 electronic notice of intent.

15 In this example, I'll focus on toxicity and
16 pesticides to illustrate staff's process in evaluating
17 the threat to water quality and how that process relates
18 to the tiers in the draft order.

19 The process simplifies a complex number of
20 factors by focusing on the most important details that
21 influence water quality.

22 This is an aerial view of the lower Salinas
23 area. In the middle, you see the City of Salinas, and to
24 the lower left you have -- you see the Salinas River.
25 There are approximately 360 individual farms in this

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1 area.
2 And, again, in this example, I'm going to focus
3 on the criteria related to toxicity and pesticides. I
4 will take you through a series of questions to illustrate
5 staff's process in evaluating threat to water quality and
6 how that process relates to tiers in the draft order.
7 This is the same area in map view. In the
8 middle, you see the City of Salinas. The rivers and
9 creeks are shown in blue. The Salinas River is there
10 towards the bottom. The top left is the Elkhorn Slough
11 and Monterey Bay.
12 The green dots are individual farms. In the
13 Salinas area, in this particular image, there are
14 approximately 360 individual farms.
15 Focusing on toxicity and pesticides, staff
16 asked a series of questions to evaluate which farms pose
17 the greatest threat to water quality, and which pose a
18 lesser threat; or, in other words, which farms are a
19 higher priority for the draft order and which are a lower
20 priority.
21 The first question we can ask is: Which farms
22 pose lower threat to water quality?
23 One way we can evaluate this is by identifying
24 operations that are SIP certified. In this case, there
25 are no vineyards in this area that are SIP certified.

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1 Again, focusing on toxicity and pesticides, we
2 can also evaluate how many farms are applying pesticides.
3 In the lower Salinas area, there are 360 farms, and they
4 all apply pesticides.
5 Recognizing that not all pesticides are a threat to
6 water quality, staff further evaluated the extent to
7 which pesticides are found in surface water.
8 As described in the order, more than 75
9 individual pesticides are found in surface water in the
10 Central Coast region. Staff evaluated the use of these
11 pesticides.
12 In the lower Salinas area, all 365 -- 360 farms
13 apply at least one pesticide which has been detected in
14 surface water.
15 While many pesticides have been detected in
16 surface water, a few have been documented to be a primary
17 -- a primary cause of toxicity and impairment, especially
18 chlorpyrifos or diazinon. Staff evaluated the use of
19 these particular chemicals. In the lower Salinas area,
20 170 of the 360 farms apply chlorpyrifos or diazinon.
21 We can also prioritize farms based upon
22 location. The idea is that a farm that is in closer
23 proximity to impaired waterbody is of relatively higher
24 priority compared to a farm that is farther away.
25 In the lower Salinas area, we can evaluate

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1 farms that apply chlorpyrifos or diazinon and are within
2 a thousand feet of an impaired waterbody.
3 In the lower Salinas area, 22 of the 360 farms
4 apply chlorpyrifos or diazinon and are located within a
5 thousand feet of an impaired waterbody.
6 We can also identify farms which may have an
7 increased threat to water quality. In this case, we
8 looked at farms which apply chlorpyrifos or diazinon and
9 drain to a creek that's impaired for toxicity and
10 pesticides.
11 Based on the information submitted with the
12 2011 electronic NOI related to the use of chlorpyrifos or
13 diazinon, the presence of tailwater and the
14 identification of discharge points on ranch maps, staff
15 estimates that approximately 10 of the 360 farms would
16 fall into this group.
17 So, in summary, in this example of the lower
18 Salinas area, focusing on toxicity and pesticides, you
19 can better understand staff's process in evaluating
20 threat to water quality. And how that process relates to
21 tiers in the draft order.
22 Similar to other water board programs and
23 general orders, this process simplifies a complex number
24 of factors by focusing on the most important details that
25 influence water quality; in this case, moving from 360

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1 farms to 10 farms to prioritize those farms that are a
2 higher priority for the draft order.
3 So undergoing this evaluation in the lower
4 Salinas area provides us with information to inform
5 tiers.
6 For this area, based on data submitted in the
7 electronic NOI, approximately 151 farms would be Tier 1,
8 199 farms would be Tier 2 and 10 farms would be Tier 3.
9 Again, this is for the criteria related to
10 toxicity and pesticides. Staff has also done a similar
11 evaluation for the nitrate-related criteria.
12 As Michael mentioned, similar to the analysis
13 of data for the lower Salinas area, this slide summarizes
14 staff's assessment of how the tiers would apply to
15 farming operations regionwide.
16 These numbers are based on information from the
17 electronic notice of intent, the existing enrollment
18 database, county crop maps and pesticide use information.
19 Staff expects that most operations would fall
20 into Tier 2, which makes sense, given that Tier 2 is
21 intended to include those operations that represent a
22 moderate threat to water quality.
23 Tier 3 would include the least amount of
24 operations, representing those that have an increased
25 threat to water quality.

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<p>1 Again, as Michael indi -- Thomas indicated, 2 this slide summarizes the order conditions. Tier 2 is 3 very similar to the 2004 agricultural order, with 4 additional necessary requirements included to protect 5 groundwater quality and drinking water sources as well as 6 improve reporting for compliance information via an 7 on-line system.</p> <p>8 Tier 1 requirements have decreased reporting, 9 and Tier 3 requirement have increased verification and 10 reporting, due to the increased threat to water quality.</p> <p>11 Now I'm going to focus on specific aspects of 12 the Tier 3 requirements, because they could be considered 13 new, while other aspects are more similar to the existing 14 agricultural order.</p> <p>15 Specifically, I'll discuss Tier 3 individual 16 monitoring, the water quality buffer plan and the 17 irrigation nutrient management plan. Lisa McCann will 18 talk a little bit more about time schedules in a moment.</p> <p>19 The draft order requires all Tier 3 dischargers 20 -- dischargers to conduct individual surface discharge 21 monitoring for those farms that have irrigation or 22 stormwater runoff.</p> <p>23 Given the relative increased threat from Tier 3 24 operations, the purpose of individual discharge 25 monitoring is to characterize the nature and amount of</p> <p style="text-align: right;">Page 50</p>	<p>1 nutrient plan include the following: 2 The plan must be certified by a crop advisor or 3 similarly qualified professional. And it must include 4 standard nutrient budgeting tools, such as the 5 identification of crop needs, reporting total nitrogen 6 applied and calculating nitrogen balance ratios.</p> <p>7 I'll talk a little bit more about the nitr -- 8 nitrogen balance ratios on the following slide. But it's 9 simply the total nitrogen applied divided by the crop 10 needs.</p> <p>11 The plan must report practices implement and it 12 must also estimate nitrate loading to groundwater. In 13 addition, there's also a requirement to verify the 14 effectiveness of the irrigation nutrient management plan.</p> <p>15 In addition, Tier 3 dischargers may -- may 16 choose to conduct groundwater monitoring to evaluate 17 nitrate loading as an alternative to the irrigation and 18 nutrient management plan.</p> <p>19 Again, only a subset of Tier 3 dischargers have 20 to develop and implement the plan, and staff estimates 21 that approximately three -- 30 of the 1700 currently 22 enrolled operations will have to comply with this 23 requirement. And only for those farmers with a high 24 nitrate loading risk.</p> <p>25 So this is a -- additional detail about the</p> <p style="text-align: right;">Page 52</p>
<p>1 waste that may affect water quality.</p> <p>2 Individual surface discharge monitoring 3 includes discharge flow and volume, temperature, Ph, 4 electroconductivity, nitrate and chlorpyrifos and 5 diazinon, if they're in use, as well as toxicity.</p> <p>6 A subset of the Tier 3 operations must also 7 develop and implement an irrigation and nutrient 8 management plan. These requirements apply to the subset 9 of Tier 3 operations that have high nitrate-loading risk, 10 and only for the relevant individual farms.</p> <p>11 The proposed nitrate-loading risk factors and 12 requirements were developed by staff in consultation with 13 technical ex -- experts, specializing in the field of 14 vegetable crops; consultants, certified crop advisors and 15 representatives from the Central Valley region.</p> <p>16 In addition, the December 3rd proposal 17 submitted by the California Farm Bureau Federation and 18 members of the agricultural community proposes to use the 19 same nitrate-loading risk factors.</p> <p>20 Given the severity of groundwater impacts in 21 the Central Coast region and the high-nitrate loading 22 risk from Tier 3 operations, the purpose of the 23 irrigation and nutrient management plan is to minimize 24 nitrate-loading to surfacewater and groundwater.</p> <p>25 Specific elements of the irrigation and</p> <p style="text-align: right;">Page 51</p>	<p>1 nitrogen balance ratio. The draft order requires Tier 3 2 dischargers with high nitrate loading risk to keep 3 specific nitrogen balance ratios.</p> <p>4 Specifically, the draft order requires a 5 nitrogen balance ratio of 1 for multiple cropping systems 6 like lettuce, and a nitrogen balance ratio of 1.2 for 7 annual crops, like strawberries.</p> <p>8 Again, these nitrogen balance ratios were 9 developed in consultation with technical experts and crop 10 advisers. The nitrate -- nitrogen balance ratio is the 11 total nitrogen applied divided by the crop needs.</p> <p>12 To be clear, a nitrogen balance ratio of 1 is 13 not perfection. It actually recognizes that nitrate 14 loading to groundwater will occur. Crops are not 100 15 percent efficient. If you apply exactly what the crop 16 needs to grow, some amount will load to groundwater.</p> <p>17 Staff's goal is to improve water quality and to 18 take steps toward reducing nitrate loading to groundwater 19 and to maximize water quality improvement over time. 20 These targets help us do that.</p> <p>21 Now I'm going to show you how this works in a 22 real example. This is a slide presented at a recent 2011 23 irrigation and nutrient management meeting. It shows 24 data from more than 100 lettuce fields over the past 10 25 years; specifically, seasonal application of nitrogen.</p> <p style="text-align: right;">Page 53</p>

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1 Staff has overlaid information onto the slide to apply
2 the requirements of the draft order.
3 Notice the spring planting for lettuce.
4 There's a large range in application of nitrogen in this
5 sample of more than a hundred -- a hundred lettuce
6 fields.
7 Here in the left you see the maximum pounds per
8 acre in the spring planting is 392 pounds per acre, and
9 the minimum is 70. This is a very wide range.
10 Remember that the nitrogen balance ratio is a
11 total nitrogen application of a crop needs, and the
12 target for lettuce is 1. Data on crop needs is available
13 for major crop types in the Central Coast region and, for
14 lettuce, the crop needs ranges from 120 to 140 pounds per
15 acre.
16 So if we use the data from the study, we can
17 evaluate the range of nitrogen balance ratios for lettuce
18 in the Central Coast region.
19 The wide range of nitrogen application yields a
20 very wide range of nitrogen balance ratios. Remember
21 that the target for lettuce is 1. So in the case of the
22 maximum nitrogen application, the nitrogen balance ratio
23 is 2.8, well over the target of 1.
24 In the case of the minimum nitrogen
25 application, the nitrogen balance ratio is 0.5, well

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1 under the target of 1, indicating a much more nutrient
2 efficient application and reduced nitrate loading to
3 groundwater.
4 We look at the average of the lowest nitrogen
5 application fields, the average nitrogen balance ratio is
6 1.5, fairly close to the target.
7 Data from this real example indicates that a
8 target of 1 for vegetables like lettuce is possible. And
9 that many farms likely exceed this target and are loading
10 to groundwater.
11 CHAIR YOUNG: I have a question about that,
12 Angela, if I could just inject before it goes further.
13 How is soil type factored into this? I mean,
14 it would seem to me that soil type -- how is soil type
15 kind of factored into this? I would think that -- you
16 know, let's assume that all farms are trying to be as
17 efficient as possible with their use of nitrogen, and
18 some are using higher amounts because of soil conditions.
19 And the only way they can get the productivity they want
20 is by using more nitrogen.
21 It -- it looks like, then, they are going to
22 suffer a consequence because of their soil type because
23 there's going to be greater nitrogen being discharged to
24 groundwater.
25 MS. SCHROETER: It -- that is correct, that

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1 soil type is a factor. The crop needs that you see here
2 for lettuce, the 120 to 140 is a range. It takes into
3 account the various factors that may affect the nitrogen
4 crop needs.
5 The irrigation and nutrient management plan
6 allows a grower to be site specific in their operation.
7 So they adapt the plan to their specific crop. And, in
8 fact, they -- we don't prescribe a crop nitrogen uptake.
9 They determine that themselves.
10 They determine it based upon documentation in
11 the literature, their own crop and tissue analysis and
12 other factors. So the point of the plan is for them to
13 determine their crop needs, report the total nitrogen
14 applied and calculate a nitrogen balance ratio.
15 CHAIR YOUNG: But what if they can't achieve
16 that ratio because of their soil type?
17 MS. SCHROETER: The --
18 CHAIR YOUNG: What -- what is going to happen
19 to them?
20 MS. SCHROETER: Within the irrigation nutrient
21 plan details in the draft order, it specifies that they
22 can provide us with information about their specific crop
23 needs, their nitrogen balance ratio and to verify that if
24 they exceed the nitrogen balance ratio, how much nitrogen
25 loading that would result.

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1 For example, if they -- if you -- if you
2 exceeded a 1.0, you can provide that information to tell
3 us this is my nitrogen balance ratio and I know that
4 nitrate's not loading to groundwater for these various
5 reasons.
6 CHAIR YOUNG: Yeah. But what if it is? What -
7 - what if the end result is there are farms that are
8 discharging nitrogen to groundwater, and that's because
9 of the soil type they have and the type of crops that
10 they want to grow on their land, and this is going to
11 result in a discharge to groundwater?
12 I'm not suggesting there shouldn't be some
13 consequence to that if there's a pollutant going to
14 groundwater. I just want to find out what you have in
15 mind in terms of what if they can't achieve that ratio?
16 What happens?
17 MR. THOMAS: So all this information is
18 submitted to the board in -- into a database, as we
19 talked about earlier.
20 We review that information, and where we see
21 that people are -- farmers are not meeting this standard,
22 we look at the overall conditions in that area.
23 So if groundwater is polluted in that area,
24 and, say, there are domestic wells in that area, we
25 follow up with that farmer and say, you've got to reduce

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1 the loading here or we'll take additional regulatory
2 action to make sure that you reduce it.
3 So it will de -- it will depend on the threat
4 that that loading places to water quality and -- and
5 human health. And we'll prioritize those cases.
6 CHAIR YOUNG: Hmm. Ad -- additional regulatory
7 action. I -- I don't want to -- I guess we won't get
8 into a discussion of that at this -- we want what you
9 have in mind.
10 But, you know, I would think that before we ever get
11 to that --
12 MR. THOMAS: Hm-hmm.
13 CHAIR YOUNG: -- level or stage that there's a
14 -- a broader discussion of what would be appropriate.
15 MR. THOMAS: Yes.
16 CHAIR YOUNG: I'm not suggesting something
17 shouldn't happen. I'm just concerned about what staff
18 may have in mind, as what it thinks is appropriate.
19 MS. McCHESNEY: Mr. Chairman, I could maybe add
20 to your -- the answer to that.
21 CHAIR YOUNG: Okay.
22 MS. McCHESNEY: The way the non-point source
23 policy works and the way the order, I believe, is set
24 out, is that if that is not working, the discharger would
25 need to provide what additional management practices

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1 could be imposed to meet the standard.
2 There -- I mean, the obligation, ultimately, is
3 for dischargers to comply with water quality standards.
4 And so, it doesn't contemplate there'll be some immediate
5 enforcement; but, rather, look at what you're doing. Can
6 you improve what you're doing to -- to im -- to reduce
7 the impact?
8 And, you know, ultimately, if they don't do
9 that, they could be subject to some kind of enforcement.
10 But, basically, the approach of the non point source
11 policy is to -- to improve your practices so that
12 ultimately you're meeting the standards.
13 CHAIR YOUNG: Okay. Mr. Jeffries, did you have
14 a comment? Question?
15 MR. JEFFRIES: Well, it appears with your line
16 of questioning would kind of change -- if they couldn't
17 meet the requirements, it would change what type of crop
18 that they would be growing.
19 And I -- I don't know if I'd want to be in that
20 position to dictate to the farmer what crop he should be
21 growing, because that is his livelihood, he or she's
22 livelihood.
23 And then, getting back to the soil conditions
24 and -- and since we're talking about the Salinas lower --
25 lower Salinas Valley, where most of it is west of Salinas

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1 itself -- which is - the people from Salinas would know
2 it as a Blanco area, where there's a lot of tiling in
3 that particular area, and we know that there are clay
4 layers in that particular area that nitrate would never
5 reach groundwater because it'd never get to the clay
6 layers.
7 Now, consequently, the tiling, that would have
8 some runoff. Is that measurement done at -- at the -- at
9 the runoff location? The tiling where it goes into some
10 kind of a drainage?
11 Then, my other question would be the followup
12 of the type of irrigation that would -- they'd be using.
13 For instance, in the Blanco area, if you're a
14 strawberry farmer and using drip irrigation, and not
15 sprinkler or water -- topwater irrigation is that going
16 to make a difference with the calculation of nitrates
17 being used?
18 I mean, there's a whole gamut of different
19 types of crops.
20 And then, how do you determine -- I -- I know
21 you're looking at what the ag is providing you, the
22 amount of nitrate that they're providing per acre for the
23 particular crop.
24 But I -- I -- to touch on some of this -- what
25 I started to bring up in February, is about Tier 3, where

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1 you talked about thousand-acre farms; where you have a
2 farm operation that might have 200 acres in the Blanco
3 area, 200 acres in the east side, 200 acres Salinas River
4 side and so forth.
5 You're still calculating in that -- that as a
6 1000-acre farm; is that correct - from the staff? - or
7 are you looking at those individual farming operations?
8 MS. SCHROETER: Well, I -- I'll get to this in
9 a little bit more detail in a moment.
10 However, in general, the way you get into a
11 tier is by the characteristics of your operation.
12 So you are correct in assuming that if your
13 operation totals up -- the ranches total up to more than
14 a thousand acres, that's correct, you -- and -- and you
15 grow a crop that is -- have a higher risk of nitrogen
16 loading to groundwater, you would fall into Tier 3.
17 However, the requirements are specific to the
18 ranch. So only your individual ranches that are a high
19 nitrate loading risk would have to implement -- develop
20 and implement a plan. And I can -- I'll show an example
21 in a moment.
22 To be clear, the order doesn't dictate what
23 crops can be grown. The goal is to reduce nitrate
24 loading to groundwater. The target of one allows us to
25 evaluate the relative load to groundwater. It's a

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1 target.
2 So what we know here -- like in this example --
3 is there are some operations that have a nitrate balance
4 ratio of almost three times that.
5 So the goal is to reduce that nitrate loading -
6 - load as evidenced by a nitrate balance ratio. And
7 clearly, there are some farms that can do that.
8 MS. MC CANN: Can I interrupt with --
9 MS. SCHROETER: And --
10 MS. MC CANN: I just wanted to add one thing.
11 The order specifically says in the condition that -- that
12 cites the ratios, that the condition is to meet the
13 ratios or an equivalent loading reduction.
14 Because a reasonable load reduction so that
15 waste isn't being discharged is what the goal of this is.
16 So these ratios are an indication of a level of loading
17 that represents waste discharge.
18 MS. McCHESNEY: Can I just --
19 CHAIR YOUNG: Okay.
20 MS. McCHESNEY: -- what you mean by that is
21 that if -- if you don't meet one, it's not -- that's not
22 an enforce -- a number you're going to enforce. It's --
23 you're looking at it as a -- as a trend or as a goal to
24 reduce loading, not to necessarily meet some -- that
25 number of one; correct?

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1 MR. THOMAS: Correct. It's - it's an
2 indication of loading to groundwater. And we are not
3 going to look at one individual case and -- and the
4 individual loading at -- at that location. We'll look at
5 all of the information that is submitted, and the
6 information in the particular area, like the lower
7 Salinas area, or an area where we're -- there are
8 domestic wells.
9 And if we find that the loading in that area is
10 presenting an unacceptable -- unacceptable risk to
11 domestic wells, for example, where the concentrations in
12 the domestic wells exceed the drinking water standard, we
13 will prioritize these areas and followup on those areas.
14 And you said earlier, Mr. Young, that we
15 probably won't get into that. We could get into that,
16 what that additional regulatory action would be. The
17 board has many options for additional regulatory action.
18 We have cleanup abatement orders and cease and
19 desist orders and waste discharge requirements with more
20 comprehensive requirements than what are included here in
21 this 2011 proposed order, and enforcement actions for the
22 conditions in this order.
23 So you have a wide range of additional
24 regulatory action that could be taken. And we would take
25 those actions in cases where it's warranted, where we

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1 have the highest risk to water quality and public health.
2 That's a very real part of our work and of this
3 order.
4 CHAIR YOUNG: Well, what I would like to happen
5 is that before the staff goes down that line, that we
6 have a discussion at the board level, with the public
7 involvement, in terms of: Here's where we're at and this
8 is where we think we need to go -- don't -- and how we're
9 going to get there.
10 MR. THOMAS: Yes. And that --
11 CHAIR YOUNG: So --
12 MR. THOMAS: -- that would happen. Because the
13 -- the vast majority of these additional regulatory
14 actions are done by the board, not staff.
15 CHAIR YOUNG: That's right. But some of them -
16 - and there's quite a few that happen below the board's
17 involvement -- and they just start to take place.
18 MR. THOMAS: Yes. And --
19 CHAIR YOUNG: Before that happens --
20 MR. THOMAS: Yes.
21 CHAIR YOUNG: -- I'd like there to be a
22 discussion at the board level, with the public's
23 involvement, so we can just see where we're at; what's
24 the information staff has collected, what have the
25 growers told us, how the staff - how has staff evaluated

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1 that, and what does staff think would be the next step?
2 So I don't want the public or the -- especially
3 the farming community, to think that staff is going to go
4 down any particular enforcement path at this time, until
5 we've had a discussion.
6 MR. THOMAS: I agree that --
7 CHAIR YOUNG: Okay.
8 MR. THOMAS: -- that's entirely reasonable, and
9 it's what we would normally do. And especially in this
10 case, where you have a lot of growers and we have a
11 dynamic situation where we are learning, as well as the
12 growers and the technical support people are learning
13 about this issue.
14 We would be providing the information that is
15 submitted to us to the board, as we go along. So we
16 would be providing regular reports to the board on this
17 and explain to you what we're finding. And then we would
18 have to discuss about what direction do we go now.
19 If we're not achieving measurable improvement
20 -- tangible improvement -- which direction do we go?
21 CHAIR YOUNG: Okay.
22 MR. THOMAS: I also wanted to follow up on one
23 comment that -- well, let's say there's a particular crop
24 that is being grown and you're unable to stop loading to
25 groundwater.

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1 We cannot say -- we, staff -- cannot say it's
2 okay; if you're growing a particular crop it's okay to
3 load nitrates to groundwater if you can't meet the
4 standard. We cannot say that. We -- and we won't say
5 that.
6 It may very well be that farming practices have
7 to change or that certain types of crops have to change
8 in order to meet water quality standards. That's another
9 very real part of our regulation and our oversight. It
10 could happen.
11 I don't want people to think that it could --
12 that there's no way that could happen. It could happen.
13 CHAIR YOUNG: Well, I understand that. And I
14 actually expect staff to do its job, and to apply the
15 law, bring to the board what it thinks is something that
16 should be done or changed or modified.
17 I just want to make sure with this particular
18 huge effort that we're undertaking, that everyone's well
19 informed about what we're going to do and that there's
20 ample time to discuss options and to consider
21 alternatives.
22 I mean, there's an explanation for why we have
23 a range from 392 to 70, in terms of nitrogen
24 applications. And that's a whole discussion in and of
25 itself.

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1 MR. THOMAS: Yes. And --
2 CHAIR YOUNG: So --
3 MR. THOMAS: -- yes.
4 CHAIR YOUNG: You know, I -- I -- the target is
5 fine. I'm not bickering about that. I'm just more
6 looking down the line of what's going to happen when we
7 have people that can't meet that.
8 MR. THOMAS: Yes. And part --
9 CHAIR YOUNG: So --
10 MR. THOMAS: -- part of that -- you know, the
11 other part of the picture is, as Mr. Jeffries pointed
12 out, what if there are site-specific conditions that a
13 person -- where a person is -- a grower is not meeting
14 the target, but they're not loading to groundwater
15 because of the particular conditions there? Then we
16 would have to consider that.
17 And that -- that grower can submit that
18 information to us, in various forms. We would definitely
19 consider that.
20 We wouldn't -- we would not have a -- an
21 across-the-board opinion that if you're not meeting the
22 target, we're going to take enforcement action. As we do
23 in -- in every case that comes before the board, we have
24 to consider the conditions of each individual case.
25 So where we have areas where our growers are

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1 not meeting those standards, we've got to look at the
2 particulars.
3 CHAIR YOUNG: Yeah, and I -- Mr. Thomas, I was
4 referring to those enforcement actions that don't come
5 before the board that -- that staff launches into. And
6 I'm not saying it's not done inappropriately.
7 I'm just saying that there are, you know, lower
8 level forms of enforcement that take place that don't
9 come before the board. And so, you know, I'm just making
10 my request known now that we have the discussion before
11 we go down those paths. That's all.
12 MR. THOMAS: We'll do that.
13 CHAIR YOUNG: I expect staff to do what it's
14 doing. But I expect to have a full-blown discussion
15 about these things at that time.
16 MR. JEFFRIES: I agree with you, Mr. Chair.
17 The other thing I wanted to point is, I would
18 say 99 percent of the farmers that I know all have
19 professional people that advise them how much fertilizers
20 or nitrates to put on their crop.
21 What are we doing to reach to those
22 professionals to bring them into the area of -- of
23 meeting this requirements? Have we -- have we attempted
24 to do that?
25 MS. SCHROETER: There -- there's a whole gamut

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1 of technical assistance and research going on about this
2 exact issue.
3 And, as I mentioned, this graphic is from a
4 recent meeting that was well attended by certified crop
5 advisers and specialists and consultants, like you're
6 describing.
7 MR. JEFFRIES: Okay.
8 MS. SCHROETER: And this was just in February.
9 So I think as the information becomes more available, as
10 research continues to be conducted and assistance
11 continues to be provided, it'll help us to progress
12 towards water quality improvement.
13 So I just have a few more slides.
14 MR. JEFFRIES: Go -- go ahead.
15 MS. SCHROETER: So -- so, again, staff
16 estimates that 30 out of the 17 -- approximately 1700
17 enrolled growers would have to develop an irrigation
18 nutrient management plan and attempt to achieve these
19 nitrogen balance ratio targets here.
20 The draft order also requires a subset of Tier
21 3 dischargers to develop and implement a water quality
22 buffer plan. Again, these requirements would apply to
23 the subset of Tier 3 operations that contain or are
24 adjacent to a waterbody impaired for sediment, turbidity
25 or temperature.

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1 And given the severity it impacts of discharges
2 to aquatic life, the purpose of the water quality buffer
3 plan is to prevent waste discharge, comply with water
4 quality standards and beneficial uses in compliance with
5 the order and the basin plan.
6 MR. JEFFRIES: Can I -- can I ask you about the
7 plans? Where are they to be kept? Are they submitted to
8 the staff? Are they on-line?
9 MS. SCHROETER: They --
10 MR. JEFFRIES: Are they accessible to the
11 general public?
12 CHAIR YOUNG: The buffer plans or the farm
13 plans or --
14 MR. JEFFRIES: Well, the farm plan -- and that
15 could be all kinds of plans.
16 MS. SCHROETER: The farm -- there's no
17 requirement to submit the farm plan.
18 CHAIR YOUNG: Okay.
19 MS. SCHROETER: The elements -- elements of the
20 farm plan, for example, management practices implemented
21 would be reported on this annual compliance form that
22 Michael Thomas described, and you would submit on-line,
23 similar to the electronic notice of intent.
24 The irrigation nutrient management plan is
25 similar. There is no requirement to submit the

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1 irrigation nutrient management plan.
2 Again, as part of this on-line reporting form,
3 you would report on key elements of the plan; for
4 example, your nitrogen balance ratio, the target you
5 achieved, your description of factors influencing the
6 target you achieved; the practices that you're
7 implementing.
8 The water quality buffer plan would be
9 submitted to the water board, as written into the current
10 draft order.
11 And let me describe to you some of the -- the
12 elements of that plan.
13 The specific elements of the water quality
14 buffer plan include a minimum of a 30-foot buffer, any
15 increases in buffer width to prevent discharge of waste,
16 a schedule for implementation, maintenance provisions to
17 ensure water quality protection, as well as photo
18 monitoring.
19 In addition, Tier 3 dischargers may choose to
20 propose a more site-specific alternative that is
21 functionally equivalent.
22 Again, only a subset of Tier 3 dischargers have
23 to develop and implement the water quality buffer plan.
24 Staff estimates that approximately 10 of the 1700
25 currently enrolled operations would have to comply with

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1 this requirement, and only for those farms that contain
2 or adjacent to a -- a stream impaired for temperature,
3 turbidity and sediment.
4 So this is one case where a water quality
5 buffer plan would have to -- would be submitted.
6 However, we anticipate, as with the other reporting
7 elements that we described, this plan would also be
8 submitted on-line through a series either of dropdowns,
9 description boxes -- or could be uploaded as well.
10 MR. JEFFRIES: I'm sorry. I didn't mean to
11 interrupt you.
12 But I just want to talk about several letters
13 that I've read and it was -- I want to thank everybody
14 that sent about a hundred and twenty-plus letters in to
15 us, they're all in this binder that I have right here -
16 talk about proprietary information and also riparian --
17 riparian areas.
18 Is this -- is that included in the 30-foot
19 buffer area? No? Yes?
20 MS. McCHESNEY: I can answer that. The -- the
21 water code specifically provides that if you are
22 requested to submit information that's considered
23 proprietary or trade secrets --
24 MR. JEFFRIES: Yeah.
25 FEMALE: -- that it is to be kept confidential

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1 by the board. So it'll be up to the discharger who's
2 submitting the plan to clearly mark the areas of the plan
3 that are proprietary information so that the board can
4 keep it confidential.
5 MR. JEFFRIES: Though the board and the staff
6 would have access to that? How -- and it's not on-line?
7 It --
8 MS. McCHESNEY: What -- correct. So there -- I
9 don't know how they're proposing to deal with it on-line.
10 But it would be required to be kept confidential.
11 But the board and the staff is allowed to view
12 it.
13 MR. JEFFRIES: What kind of assurances can we
14 give to the ag -- ag groups that this confidential
15 information will be kept confidential?
16 As we know, with all the leaks and all these
17 kind of things that our federal government is involved
18 in, how do we know that this information is going to be
19 kept that way? What safeguards do we have?
20 MS. SCHROETER: We would do that similar to any
21 other program that we -- and/or set of proprietary
22 information that we currently deal with.
23 And, in fact, if we deal with it
24 electronically, it allows us to mark those clearly, and
25 to not be -- not distribute those publically.

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1 MR. JEFFRIES: Okay.
2 MS. SCHROETER: However, we -- staff would have
3 to make the determination that that actually was
4 proprietary information.
5 So the -- the discharger would tell us, mark
6 those, and then if -- we would have a discussion about
7 what elements were proprietary and which were not.
8 So --
9 MS. McCHESNEY: But I can just add --
10 MR. JEFFRIES: Okay. If we --
11 MS. McCHESNEY: -- typically what -- I mean,
12 this is a common situation, where people submit
13 proprietary information. The board keeps it
14 confidential, and what we typically do is tell the person
15 who submitted it, we will keep it confidential; if we get
16 a request for this information -- a Public Records Act
17 request -- we will inform you that we've received the
18 request, and you can assist us, and I'd -- you know, in
19 assuring that what we have to produce publically is not
20 proprietary.
21 Because often they'll mark the entire report as
22 proprietary, when it's not. And we -- you know, it's a
23 -- it is an issue because we're required, by law, to --
24 to provide public records.
25 And so we have to be sure that we comply with

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1 that law to provide public records, as well as to keep
2 information that truly is considered proprietary or trade
3 secrets by law private.
4 So it's -- it's -- this is not a new issue. It
5 happens all the time, and the staff is prepared to deal
6 with those issues.
7 CHAIR YOUNG: Let me make a suggestion about
8 this point.
9 I'd like to make sure that once staff has
10 reviewed what has been marked, you know, by the applicant
11 as proprietary, that staff has had a discussion with the
12 applicant; if you come up with a different determination
13 that, no, this is not proprietary, we intend to release
14 it if asked, that, at least, you have a discourse with
15 the applicant and allow them to tell you, again, why they
16 think it should be kept confidential.
17 And, if not, I -- I'd like them to know what is
18 going to be released, if asked.
19 MS. McCHESNEY: And --
20 CHAIR YOUNG: Not so -- that staff gets the
21 information, makes the determination, there's no further
22 exchange with the applicant. But it just gets released
23 somehow.
24 MR. JEFFRIES: Yep. Because assuming that it's
25 accepted that way.

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1 CHAIR YOUNG: Yeah. I want to make sure
2 there's a closed loop on that; that, you know, if you
3 disagree with the applicant, that the applicant has an
4 opportunity to at least bring that to closure.
5 MS. McCHESNEY: And that -- and, again, that's
6 -- that is the normal process, is to not release the
7 information without having that conversation with the --
8 with the submitter of the information before -- and
9 giving that person an opportunity to defend it, and say,
10 no, it is proprietary and here's why.
11 And -- and -- it's -- it's extremely rare that
12 it happens but, you know, it --
13 CHAIR YOUNG: Is that in the code?
14 MS. McCHESNEY: That's just a practice that the
15 board engages in. Because it is required by law to keep
16 it confidential if it -- and truly is confidential.
17 So it's a practice that -- I mean, you know, I
18 just -- I've been the attorney for boards for 23 years,
19 and -- and it's happened twice that we've even engaged in
20 that issue.
21 So it's not -- it's common to keep it
22 confidential. It's rare to have to deal with the issue
23 of disclosing it. So -- but it does happen.
24 CHAIR YOUNG: But this is -- this is a huge
25 effort --

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1 MS. McCHESNEY: Right.
2 CHAIR YOUNG: - encompassing a lot of people -
3 - encompassing a lot of people, a lot of acreage, a lot
4 of issues, so --
5 MS. McCHESNEY: Yeah, and it's -- you know --
6 CHAIR YOUNG: -- I would -- would think that we
7 -- there may be requests for this information.
8 MS. McCHESNEY: Right. And so, it's important
9 to -- to be clear and -- and I've advised staff on how to
10 do that and --
11 CHAIR YOUNG: Okay.
12 MR. THOMAS: Mr. Chairman, we would -- where --
13 where there's controversy -- you know, if there's a
14 disagreement between us and a discharger, then -- if
15 there is disagreement between staff and a discharger
16 about confidentiality, we would definitely be talking to
17 the board's counsel about that. We won't make the
18 decisions on our own.
19 CHAIR YOUNG: Okay.
20 MR. JEFFRIES: I asked a question about the
21 buffer. Can you elaborate on the buffer?
22 MS. SCHROETER: Can you repeat your specific
23 question, elaborate on --
24 MR. JEFFRIES: Well, I was talking about
25 riparian buffers.

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1 Is that what you're talking about; the 30-foot
2 buffer or buffers to be increased?
3 MS. MC CANN: What -- what she's talking about,
4 in general, is a requirement to ensure that Tier 3
5 dischargers, that are discharging to an impaired
6 waterbody for sediment, turbidity or temperature, are
7 ensuring that there are no waste discharges into that
8 stream.
9 A very effective and standard way to do that is
10 to have a vegetative buffer between the edge of the area
11 that has the likelihood of discharging waste, such as a
12 bare field or a row between vegetative crops and the
13 stream that's impaired.
14 MR. JEFFRIES: I brought this issue up before
15 because of the requirements of food and ag that are now
16 requiring that they don't have any buffers.
17 How do we -- you know, we got two -- two
18 jurisdictions telling these folks two different things,
19 And we're going to say that you're discharging because
20 you don't have some kind of a buffer there; and then you
21 have, on the other hand, food and ag is telling them you
22 can't have a buffer because the possible contamination.
23 How -- how are the two agencies working
24 together on this?
25 MR. THOMAS: And I'm not an attorney on this,
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1 but --
2 MR. JEFFRIES: Neither am I, but I'm just
3 asking the question.
4 MR. THOMAS: -- the -- there is -- there is a
5 conflict, as you pointed out, between food safety issues
6 and requirements or conditions of the board.
7 The -- my understanding of it, not being an
8 attorney, is there isn't a agency requirement or
9 regulation that there be no vegetation or no buffer.
10 There are buyers who have people in the field
11 indicating to farmers that they are reluctant or will not
12 buy produce if there is wildlife in the vicinity of that
13 produce, because of the risk involved.
14 And the literature does not support the buyers'
15 or auditors' position that there should be bare ground or
16 no vegetation or no riparian vegetation. But that is the
17 greatest risk.
18 The -- the literature shows that domestic
19 cattle and pigs are the largest source of the most
20 problematic bacteria and that -- and we -- we reference
21 this in our letters to other agencies and in our staff
22 report -- where there are reports and literature that
23 show removing the vegetation could exacerbate the
24 problem, not improve it -- the food safety problem -- by
25 allowing the transport of this problematic bacteria.
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1 Though the -- while there is a conflict between
2 buyers and water board conditions or requirements, we
3 don't see a conflict between requirements of different
4 agencies. Those are two very different things.
5 MR. JEFFRIES: Well, I'm sure we'll hear more
6 about that today.
7 MS. McCHESNEY: And -- and, Mr. Jeffries, just
8 to add to that, the -- the proposed order has: Submit a
9 buffer plan, where you would identify how it is you
10 intend to prevent discharges of waste to waters of the
11 state.
12 If it doesn't work for you to have a buffer --
13 to have a -- a riparian buffer of 30 feet or whatever,
14 you would need to propose another way because you're
15 still obligated to comply with the basin plan standards
16 of not discharging.
17 And I think what you said was there would be
18 about 10 farms in the -- out of 1700 that would be
19 subject to that. So, certainly, staff would be able to
20 work with those individuals to figure out how to work out
21 the plan with them.
22 CHAIR YOUNG: The -- the minimum 30-foot buffer
23 that, in conjunction with - or any alternative that a
24 farmer could come up with that would accomplish the same
25 end result.
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1 So if someone says, you know, I can get
2 something engineered within a 15-foot buffer that'll do
3 the same thing, and we can show it to you, that would be
4 acceptable.
5 MS. SCHROETER: That's correct.
6 CHAIR YOUNG: Okay.
7 MS. SCHROETER: So in conclu -- just -- to
8 conclude here, the draft ag order takes into account the
9 complexity of irrigated agriculture and the specific
10 characteristics of individual ranches and simplifies the
11 tiering criteria and order requirements by focusing on
12 the most important details to protect water quality.
13 The order is reasonable, and the tiering --
14 tiering and requirements are scaled based on threat to
15 water quality, similar to all other water board programs.
16 Tier 1 has the minimal requirements and will
17 minimize the burden on small farms and those which pose
18 the least threat to water quality.
19 Tier 2 is similar to the 2004 agricultural
20 order, and has a reasonable level of requirements for a
21 majority of the farms in the Central Coast region. It
22 includes the necessary reporting of key management
23 practice outcomes and how they are effective.
24 Tier 3 is necessary and responsible given the
25 increased threat to water quality and the severity and
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1 magnitude of water quality problems and impacts to public
2 health.
3 And now Lisa McCann will speak to you more
4 about our public input --
5 CHAIR YOUNG: Before Lisa starts, I have a
6 couple other questions, Angela, for you.
7 If you could go backwards, you had some slides
8 involving the 360 farms in the Salinas area, and the
9 number of pesticides that were in use.
10 And I think you said there were a total of 75
11 pesticides in use, that you identified.
12 MS. SCHROETER: There are 75 pesticides which
13 have been currently detected in surface water.
14 CHAIR YOUNG: Okay.
15 MS. SCHROETER: We evaluated -- of the farms
16 that apply pesticides -- are all of them using those 75
17 or are some growers using chemicals that are not even
18 found --
19 CHAIR YOUNG: Okay.
20 MS. SCHROETER: -- in surface water?
21 CHAIR YOUNG: So let's take away the two big
22 ones. Okay? Of those 73, are any of those 73 having a
23 toxic affect in surface waters?
24 MS. SCHROETER: Yes.
25 CHAIR YOUNG: Okay. But you're not proposing

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1 to pull those into the same requirement as you are for
2 chlorpy -- chlorpyrifos or diazinon?
3 MS. SCHROETER: No. Staff considered -- as
4 mentioned in the staff report, staff considered a wide
5 variety of options for developing requirements related to
6 toxicity and pesticide.
7 As an example, we looked at DPR's entire list
8 of restricted use chemicals. Looked at which of those
9 chemicals were detected in Central Coast water and which
10 were in use and still found that that list was very
11 broad, and felt that that would be overly burdensome to
12 growers to apply a tiering criteria based upon the use of
13 75 chemicals.
14 So that is why we looked at which chemical were
15 well documented to cause toxicity and impairment in
16 waterbodies in the Central Coast region.
17 And at the time of the drafting of this order,
18 there was significant evidence in the literature about
19 chlorpyrifos or diazinon.
20 CHAIR YOUNG: Okay. I -- but I think you said
21 that the 73 do have a toxic effect in surface waters.
22 Forgetting -- forgetting about that there may be not as
23 much in use as the other two, how -- I don't -- I don't
24 see you you're justifying not including them in this
25 requirement.

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1 MS. SCHROETER: It -- it goes to reasonableness
2 and also because of the overwhelming amount of
3 information for these two, so that we just wanted to
4 start off with the two known to cause severe toxicity and
5 impairment in the Central Coast region.
6 In response to staff's own thinking about other
7 chemicals that cause toxicity as well as many, many
8 comment letters about that, we included the finding in
9 the draft order that specifies, as additional information
10 becomes available and impairments are known and it
11 becomes documented of other chemicals, we may also
12 include those -- or consider those are part of the
13 tiering criteria.
14 CHAIR YOUNG: And how is that information going
15 to be known to staff?
16 MR. THOMAS: Well, these studies are ongoing,
17 as to the toxicity of various pesticides in -- in
18 receiving waters.
19 The Department of Pesticide Regulation has a
20 draft report -- it just came out in February -- which
21 goes to this very subject. It -- it has -- the sampling
22 is above and beyond what has been done in the past.
23 And it shows that there are other chemicals
24 that are causing toxicity and that are found in receiving
25 waters.

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1 And the report -- or the order, the way we've
2 written it, allows the executive officer to take into
3 account this new information that comes up. And change
4 the criteria.
5 Mister -- Mr. Young, earlier you said -- you
6 referred to this as a requirement. This is criteria for
7 deciding who -- you know, what --
8 CHAIR YOUNG: Right.
9 MR. THOMAS: -- requirements or what conditions
10 are placed on different growers.
11 CHAIR YOUNG: Right.
12 MR. THOMAS: So we would adjust the criteria,
13 based on new information that comes out. And these
14 studies that come out about the toxicity of various
15 chemicals.
16 CHAIR YOUNG: How is it that you know that --
17 that there's 73 that do cause toxicity?
18 MS. SCHROETER: That -- that's --
19 CHAIR YOUNG: Haven't there been studies that
20 have shown that?
21 MS. SCHROETER: There are, but to a lesser
22 degree than to the existing.
23 One of the things that I didn't mention, also,
24 is that the -- the current monitoring that we conduct in
25 the receiving water -- and Karen can correct me if I'm

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1 wrong -- doesn't have an extensive list of pesticides.
2 So, while we do have information, it's not as
3 robust as what we have for chlorpyrifos and diazinon.
4 And what we've done in the draft order is to include a
5 larger suite of pesticides in the receiving water
6 monitoring, so we get a better idea of what chemicals are
7 being found in surface water and which are causing
8 toxicity.
9 So this draft order also helps us to gather
10 that new information.
11 MR. JEFFRIES: Mr. Chair, if I may, I'd like to
12 follow up on those other 73.
13 Are some of those constituents banned
14 constituents that have been identified?
15 MS. SCHROETER: The -- there are banned
16 constituents that, of course, contribute to toxicity.
17 It's actually, I think, more than 75.
18 The -- the ones that I'm referring to and which
19 are indicated in the findings of the draft order are
20 currently in use.
21 CHAIR YOUNG: And in the notice of intent, is
22 there a box there for people to list any pesticides that
23 they're using, or just whether they are using C and D?
24 MS. SCHROETER: The -- the growers already
25 report to the Department of Pesticide Regulation, through

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1 the permitting process, which chemicals they plan to use.
2 Staff is -- has access to that data and we are using that
3 data and evaluating that data.
4 Unfortunately, that data doesn't come in a very
5 timely manner to us. And so we have put, in the notice
6 of intent, checkboxes that allows them to quickly report
7 whether or not they're using chlorpyrifos and diazinon.
8 It also provides a space for them to report
9 their pesticide use permit number, so staff can quickly
10 assess which chemicals they are applying, without
11 imposing the burden upon them to report every single
12 chemical that they're using.
13 CHAIR YOUNG: Well, seems to me the issue here
14 is just toxicity, period.
15 MR. THOMAS: It is.
16 CHAIR YOUNG: Not -- not the individual
17 components of it. I mean, that -- isn't that what the
18 standard is in
19 -- in the receiving waters?
20 MR. THOMAS: It is. That is the --
21 CHAIR YOUNG: So --
22 MR. THOMAS: -- basic --
23 CHAIR YOUNG: -- I mean, if you started from
24 that and worked backwards, you could simply say, you
25 know, are you discharging anything that might be

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1 contributing to toxicity?
2 And it seems like you're -- you're narrowly
3 defining this criteria here.
4 MR. THOMAS: Yes.
5 CHAIR YOUNG: And so I -- I just have an issue
6 with that, at this point. And I'll just listen to what
7 everyone else has to say about it. But --
8 MR. THOMAS: Yes. It's true. What you just
9 said is accurate. We're narrowly defining this criteria
10 according to specific chemicals at this point in time.
11 The -- the order requires toxicity sampling in
12 receiving waters. It also says that the executive
13 officer will -- will follow up -- will -- will order
14 follow-up monitoring to determine what is causing that
15 toxicity, what chemicals are causing that toxicity.
16 And there are toxicity identification analyses
17 that are done. Standard practice is to determine what
18 chemicals are actually causing it. So that's built in to
19 the order to do that follow-up monitoring, to determine
20 what those chemicals are and where they are coming from.
21 We can't know it ahead of time. We do the
22 sampling, we do the analysis to determine what that is,
23 and then we modify our approach based on those results.
24 CHAIR YOUNG: But you could know ahead of time
25 if they're using any other chemicals on the list, if you

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1 asked, instead of the C and the D. I mean, that would
2 start to give you some information that perhaps you
3 should be looking a little further.
4 MR. THOMAS: Hm-hmm.
5 CHAIR YOUNG: But we can go on. Lisa, you want
6 to start your portion of this?
7 Oh, actually something else for Angela, if I
8 could.
9 Going back to the tiers, let's say I'm in Tier
10 1. How do I get out of Tier 1? Is there any way?
11 MS. SCHROETER: How do you get out of --
12 CHAIR YOUNG: Yeah.
13 MS. SCHROETER: -- Tier 1?
14 CHAIR YOUNG: Let's say I'm a farm -- farmer --
15 no.
16 MS. SCHROETER: You don't want to be in the
17 order.
18 CHAIR YOUNG: Yeah. You want to -- you don't
19 want to be under this order at all.
20 MS. SCHROETER: Then you would eliminate your
21 discharge.
22 CHAIR YOUNG: What if you can show that the
23 discharge is not causing -- is not violating any
24 standards?
25 Yeah, I have a discharge that's water, and

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1 before it gets into groundwater, there's nothing in it;
2 before it gets off my land, there's nothing in it except
3 water, or it -- it's at least meeting receiving water
4 standards. Can I get out of the order?
5 MS. McCHESENEY: I -- let me answer that. The
6 water code requires that a person who's discharging waste
7 or intend -- or could discharge waste that could impact
8 the quality of the waters -- not violate water quality
9 standards, but could impact the quality of the waters of
10 the state, must submit a report of waste discharge and
11 receive waste discharge requirements or a waiver of waste
12 discharge requirements.
13 So just saying that I am not violating water
14 quality standards, does not get you out of that
15 obligation to comply with the water code. If you, in
16 fact, do not discharge anything, then you're not
17 obligated to submit a report of waste discharge or -- or
18 join this -- enroll in this waiver.
19 But the fact that you may discharge something
20 that could impact the quality of the waters of the state,
21 obligates you to comply with the water code and that's
22 how it works.
23 CHAIR YOUNG: I -- I understand that. And I'm
24 not -- and I'm not suggesting that someone not file
25 something.

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1 But let's say that people have filed -- let's
2 say they have filed because they could possibly threaten
3 water quality, but they're then able to demonstrate that
4 their discharge is not violating any standards.
5 MS. McCHESENEY: Well, the way the order is set
6 up now is to have a Tier 1. If you want to have a Tier 0
7 or a Tier 4, you know, you could have a tier that has
8 even lesser requirements if you choose.
9 So if they're below some threshold --
10 additional threshold -- you know, you could ask how that
11 could work.
12 CHAIR YOUNG: I mean, it's something we could
13 talk about. But I'd like there to be, you know, some
14 incentive, you know, for people to try to get to that,
15 you know, level where they can demonstrate they're not
16 having an impact on the environment.
17 But --
18 MR. JEFFRIES: Well, Mr. Chairman, there's
19 obviously 7 percent of the community feels that --
20 because we only have 93 percent enrolled in our old
21 order. So there's 7 percent feel that they're in that
22 position already.
23 CHAIR YOUNG: Well, I don't know if that's
24 wishful thinking or not. I don't know who the -- who
25 they are or what they represent, but --

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1 MR. THOMAS: Well, it -- it just --
2 CHAIR YOUNG: -- there is a number out there
3 that's not --
4 MR. THOMAS: Yeah. They may have a different
5 opinion, then, that they're not discharging.
6 MR. JEFFRIES: A little levity on this issue.
7 CHAIR YOUNG: Right.
8 MR. JEFFRIES: But it just -- it brought to
9 mind that -- since we're here in Watsonville, I do know
10 that historically there were apple orchards up in the
11 Mount Madonna area that didn't irrigate. They were all
12 natural spring-fed irrigation.
13 There was no water applied, other than the
14 rainfall and what springs provided to their orchards.
15 There was no turbidity runoff. They did use chemicals to
16 spray.
17 So how do they fit in that criteria? I mean,
18 there's -- and I think that's kind of where Chairman
19 Young was going. If you -- say, if you have a strawberry
20 farm -- I don't want to keep picking on strawberries, but
21 I do know they use drip.
22 And, also, grape. If you have a small
23 vineyard, 800 acres, then you use drip, you have no
24 runoff; use some chemicals, but it's all within - you
25 meet all the requirements.

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1 Why would you have to go through all the
2 nosebleed of filing a -- an application each time, each
3 reporting time?
4 MR. THOMAS: Well, the notice of intent is
5 something you do once in a five-year period. And it
6 would describe your operation. So if you have an
7 operation, as you're describing that -- in -- in the
8 grower's opinion, is -- is not discharging waste, then
9 that's what they would describe in that.
10 And I -- I don't think that's a -- a great
11 burden to describe one's operation --
12 MR. JEFFRIES: Well, there's --
13 MR. THOMAS: -- every three to five years.
14 MR. JEFFRIES: -- some letters from avocado
15 farmers that gave that somewhat same description. And
16 they want to know why they had to be participating in
17 this. But -- just bring that up.
18 MR. THOMAS: As counsel has explained, if -- if
19 there is a discharge, and -- they've got to be covered.
20 MR. JEFFRIES: And if they don't have any
21 discharge and they can prove it?
22 MR. THOMAS: Then they would not need a permit.
23 CHAIR YOUNG: Okay. Then could you explain to
24 us, like, if you're in Tier 3 or 2, how you could move
25 down a tier.

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1 MS. SCHROETER: So the -- there is a -- there
2 is -- we -- the -- the order, as with any other pro --
3 program or general order, specifies general criteria, and
4 so, we recognize that the criteria may not fit all
5 operations, and that some operations may legitimately not
6 belong in a particular tier.
7 So we included a specific condition -- I
8 believe it's condition number 17 -- that lists ability
9 for a grower to document why they should be in a lower
10 tier, and it lists all the specific information they
11 could provide.
12 And it's similar to other programs. For
13 example, we evaluated what we look at in reports of waste
14 discharge types of information. It's standard.
15 MR. JEFFRIES: I don't want to keep harping on
16 this issue, but I -- I keep going back to the criteria of
17 Tier 3. And my understanding -- and correct me if I'm
18 wrong
19 -- if you -- if you have a farm of a thousand acres or
20 more, is that one of the criterias?
21 MS. SCHROETER: That's correct.
22 MR. JEFFRIES: Okay.
23 MS. SCHROETER: Or, I'm sorry. It's a thousand
24 acres or more if you grow crops that are high nitrate
25 loading to groundwater. If you just have a thousand acre

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1 vineyard, you are not automatically Tier 3.
2 MR. JEFFRIES: In February I used the
3 description, and our legal advised me that we couldn't go
4 into that at that particular time. And I used the - for
5 instance, the Jeffries farm. And I farm a thousand
6 acres.
7 But it isn't one plot. It's a thousand acres
8 over the whole Salinas Valley. I'm one farm, but I -- I
9 farm several acres in different parts of the Salinas
10 Valley; some I own, some I lease.
11 Does that constitute a thousand acres? Would I
12 be required to file just because I do farm -- what
13 happens if I farm 999 acres?
14 You know, why -- and so, how does the
15 collectively -- you're collecting the amount of acres for
16 one farming operation.
17 So Jeffries farm operates a thousand acres, but
18 it's not one thousand-acre lot; it's 50 acres here, a
19 hundred acres there and so forth.
20 Why would I be in Tier 3 if I had a thousand
21 acres?
22 MS. SCHROETER: So I -- I -- drafted this slide
23 that you see here in front of you. And the draft order
24 -- the tiering system is based upon your individual
25 operation.

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1 We heard from many commentators that we shouldn't
2 -- we should recognize that the -- the relative load of
3 pollutants, and especially recognize that smaller farms
4 may not have as significant pollutant load as a larger
5 farm.
6 And, in terms of nitrate loading potential, I
7 think the evidence shows that you -- a high
8 nitrate-loading crop over a large acreage is higher risk
9 than a high nitrate-loading crop on very small acreage.
10 So here's an example in front of you that shows
11 how a Tier 3 operation of greater than a thousand acres
12 - how the requirements would apply. Because
13 requirements actually apply based upon your individual
14 ranch.
15 So in this example, there is one operation;
16 it's 1300 acres and there's three different farms. The
17 farms may be in the same watershed or they may be in
18 completely different watersheds.
19 So farm number one is 800 acres lettuce; farm
20 number two is 200 acres of carrots; and farm number three
21 maybe is 300 acres of grapes. I put some factors in here
22 to help us illustrate more some specifics.
23 So let's say the lettuce farm does have
24 tailwater; the carrot farm is all on drip, so maybe
25 there's no tailwater; vineyards, of course, have very

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1 little irrigation runoff, and let's say there's no
2 tailwater.
3 But let's say that the vineyard is next to this
4 creek, which is impaired for sediments and turbidity. So
5 farm number one, because it's a high-risk nitrate-loading
6 crop, would have to evaluate their nitrate loading risk
7 factor. If that risk factor was high, they would have to
8 imple -- develop and implement an irrigation nutrient
9 management plan.
10 Because they also have tailwater, they would
11 have to do individual discharge monitoring for their
12 irrigation runoff and stormwater.
13 The 200-acre carrot farm would likely -- after
14 an evaluation of nitrate loading risk, would likely be
15 low and, therefore, would not require the development and
16 implementation of an irrigation nutrient management plan.
17 But they have tailwater, and so they would have
18 to conduct individual monitoring -- or, I'm sorry -- they
19 don't have tailwater, so they would have to do irrigation
20 runoff monitoring, only stormwater monitoring.
21 This farm number three in this example is a
22 vineyard with no tailwater, but next to the sediment --
23 or turbidity-impaired creek.
24 Because they're not a high nitrate-loading ran
25 -- or farm, they wouldn't have to do the irrigation

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1 nutrient management plan, but they -- they would have to
2 do the water quality buffer plan or an alternative
3 because they're next to this sediment or
4 turbidity-impaired creek.
5 So this is an example that illustrates the -- a
6 Tier 3 operation, multiple farms over a large acreage and
7 how we attempted in the draft order to require
8 farm-relevant conditions.
9 CHAIR YOUNG: Question now. Let's look at
10 number -- farm number one. It has been pulled into Tier
11 3 simply by virtue of the fact that the owner has these
12 other two farms.
13 And then, if you had another farm adjacent to
14 it, everything the same - 800 acres, lettuce, tailwater
15 - it would not have the same requirements imposed on it;
16 right?
17 MS. SCHROETER: That is partially true.
18 Because the -- if the adjacent acreage was Tier 2, they
19 would still have to evaluate the nitrate loading risk and
20 they would still have to report the total nitrogen
21 applied, which are elements of the annual compliance
22 form.
23 They would not have to go through the whole
24 process of evaluation irrigation nutrient management
25 plan.

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1 And, essentially, what we have done -- and this
2 is not to say that the smaller acreage farms don't have
3 the potential for nitrate loading, because they do.
4 CHAIR YOUNG: But they do. Right.
5 MS. SCHROETER: The -- the -- the point here in
6 this requirement is that the smaller operations in the
7 beginning, have to conduct less requirements. And we --
8 we are trying to recognize the fact that the smaller
9 farms had several comment letters that the requirements
10 were overly burdensome.
11 So it's a phasing of requirements. And
12 starting with those operations that are larger and
13 potentially have higher risk.
14 Alternatively, we also considered --
15 CHAIR YOUNG: Angela --
16 MS. SCHROETER: -- the same requirements from
17 everybody.
18 CHAIR YOUNG: Excuse me, Angela. But the risk
19 to farm -- from farm number one is no different than the
20 risk to the adjacent farm, doing the exact same thing.
21 MS. SCHROETER: Right.
22 CHAIR YOUNG: If that's conceptual, I just have
23 a problem with the way this is laid out; that just by
24 virtue of an owner collectively having a lot of land,
25 that each of these farms isn't being evaluated

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1 independently, and is being evaluated in this aggregate.
2 So, I just have an -- kind of an issue with it.
3 MS. SCHROETER: We attempted to be reasonable
4 in applying the requirements.
5 CHAIR YOUNG: And I understand. I'm just
6 pointing out what my observation is.
7 Now let's look at farm number two, the 200
8 acres of carrots. Is farm number two having to do
9 anything extra by virtue of the fact that it now happens
10 to be owned by this individual that has over a thousand
11 acres?
12 I mean, would -- would this be simply a --
13 could this be a Tier 1? Standing alone.
14 Got another neighbor next door, farm B, 200
15 acres of carrots, no tailwater.
16 MS. SCHROETER: It depends on if they're using
17 chlorpyrifos or diazinon. But it's possible. It's
18 possible.
19 CHAIR YOUNG: It is possible it could be Tier
20 1.
21 MS. SCHROETER: Hm-hmm.
22 CHAIR YOUNG: And it's possible it may not have
23 to do individual monitoring. Okay.
24 So those are two examples that I -- I think
25 there's maybe -- I mean, it's your approach to this. I'm

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1 not saying it's not reasonable. I'm just pointing out
2 that it -- it's something for us to talk about.
3 MR. JEFFRIES: I think it's going to cause a
4 lot of confusion, in my estimation.
5 CHAIR YOUNG: Well, it's the fairness factor --
6 MR. JEFFRIES: Well, it's the fair --
7 CHAIR YOUNG: -- for me.
8 MR. JEFFRIES: -- that on top of that. But
9 that's the reason I point it out. If you have -- one
10 operation has multiple locations, they may not
11 collectively be one farm of a thousand acres --
12 CHAIR YOUNG: Right.
13 MR. JEFFRIES: -- that they're irrigating or
14 whatever they're doing at farming at the one particular
15 location, but might be spread all over the Salinas
16 Valley.
17 CHAIR YOUNG: Right, right, right.
18 MR. JEFFRIES: And so, consequently, why -- you
19 know, if one of their locations meets the Tier 3, why
20 does the whole operation meet the Tier 3? The rest of it
21 might be in Tier 1.
22 And it -- and that would make a lot of
23 difference on the type of monitoring that they'd have to
24 report and the cost of that monitoring.
25 So that's -- that's my -- some of my concern.

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1 That -- and that's what I was -- tried to allude to in
2 February, when I started on that -- that questioning of
3 -- of the farm being that size.
4 And I think that's something the staff needs to
5 look at and define a little bit better. And maybe the
6 board should take a little closer look at that.
7 CHAIR YOUNG: Well, I -- I think stated another
8 way, the -- the level of regulation should be
9 commensurate with the threat. Just boil it down to that.
10 And if you got two farms side by side that pose
11 the same amount of threat, I think that the level of
12 regulation should be similar, unless you can demonstrate
13 -- better than what I've seen so far -- that it should be
14 done any differently.
15 So, I mean, the only rationale I can see is
16 that you have a -- a landowner with more than a thousand
17 acres, that he or she has more money, possibly -- more
18 revenue stream to deal with this.
19 But I don't know that that should be the
20 criteria that should be used.
21 MS. SCHROETER: Before we get on to Lisa's
22 presentation here, just to mention, staff evaluated
23 tiering based upon individual ranches. And if you
24 remember the figure that I showed you in the beginning,
25 of the 1700 operations that we have, that's more than

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1 3,000 individual farms.
2 And some farms have as many as 10 to 12 ranch
3 -- farms -- individual farms, some operation - I'm
4 sorry.
5 And so, what it does is it requires those
6 particular operations to tier all of their farms
7 individually and to comply with all those requirements
8 individually.
9 Instead, what we did was to tier versus an
10 operation, and then when it came down to the ranch level,
11 to apply the conditions ranch -- or farm specific.
12 So, for example, we didn't have all of the Tier
13 3 operation -- farms within an operation have to do an
14 irrigation nutrient management plan. We attempted to
15 say, okay, only -- that condition only applies to the
16 farm where it makes sense.
17 CHAIR YOUNG: Okay. Who is next? Lisa.
18 We'll take a break after your presentation. So
19 -- I need to get some water.
20 MS. MC CANN: Okay. Well, this is the section
21 I know you've all been waiting for.
22 CHAIR YOUNG: The end; right?
23 MS. MC CANN: Yes. Exactly. Actually, Michael
24 -- Michael will be the end.
25 And since my last name is McCann, instead of

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1 saying good morning, I'm going to say top of the day to
2 you on this St. Patrick's Day.
3 CHAIR YOUNG: Okay.
4 MS. MC CANN: I'm going to review the public
5 input process and summarize the outcomes of the early
6 public input prior to us publically distributing the
7 draft -- November 2010 draft agricultural order. And
8 briefly discuss the alternatives that were submitted, and
9 how those were considered in developing the draft to 2010
10 order.
11 And then I'll review the spe -- some of the
12 specific popular comments we got on the -- that draft
13 that led to the 2011 draft order that we're discussing
14 today.
15 So we've been seeking input in discussing
16 requirements for this order for about two and a half
17 years, starting in fall 2008; met with numerous
18 stakeholders that included several individuals, groups at
19 multiple events in several different forums.
20 And through all these meetings and events we
21 received a lot of input, and we've attempted to respond
22 to all of this input.
23 And you might recall that the staff report
24 included a table that had a long list of all the outreach
25 events that we attended and participated in.

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1 In addition to those, we had numerous follow-up
2 phone conversations and meetings with individuals as
3 outcomes of those particular events, as well.
4 So, in summary, as in that early period we
5 heard these kind of key -- key points and key input, that
6 we should prioritize based on water quality effects; that
7 human health and drinking water should be the highest
8 priority -- protecting human health and drinking water;
9 that one size does not fit all, and that the requirements
10 should be higher for those discharging the most or most
11 threatening water quality, and that growers need
12 flexibility to comply; that we should be reasonable in
13 terms of providing timeframes that are reasonable, to
14 control waste discharges and to meet water quality goals;
15 that we should require reasonable amounts of
16 implementation, monitoring and reporting requirements;
17 and that the flexibility is needed to comply with these
18 requirements based on uniqueness of the multitude of
19 operations.
20 So we considered a -- a wide range of options.
21 And, again, we -- we gave you a lot of pages describing
22 all those options, in the staff report. And that was
23 based on staff research, input from stakeholders and
24 reviewing some readily available examples that we had, as
25 well as alternatives submitted.

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1 So, first of all, we used as a basis, as
2 Michael illustrated earlier, the existing 2004
3 conditional waiver. We also looked back to the
4 recommendations that we had made in our February 1st,
5 2010 preliminary draft order.
6 We looked at an alternative that was submitted
7 by OSR Enterprises, which is a farming operation in our
8 region; alternatives submitted by the California Farm
9 Bureau Federation in conjunction with other agricultural
10 organizations and the county farm bureaus; and an
11 alternative submitted by a -- a group of environmental
12 organizations, including the Environmental Defense
13 Setter, Monterey Coastkeeper and others.
14 I've lined these up in terms of the degree of
15 regulation or requirements, which Michael also talked
16 about in his introduction.
17 In staff's opinion, the 2004 conditional waiver
18 and the alternative submitted by OSR Enterprises and the
19 Farm Bureau Federation are similar and provide the lowest
20 degree of regulation, relative to this list.
21 And we compared all these to develop the 2011
22 draft agricultural order and - this is where it falls in
23 this list as far as the degree of regulation and
24 requirements in evaluating, compared all these options
25 and alternatives to build an order that was responsive to
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1 stakeholders' recommendations, while still addressing
2 water quality problems, providing accountability,
3 reasonableness and flexibility.
4 The farm bureau alternative and the
5 environmental alternative contain some unique features or
6 terms, which I want to mention briefly.
7 The farm bureau proposal led staff to add the
8 use of coalitions as an acceptable means for individual
9 growers to comply with the order.
10 But there were several other elements of the
11 proposal that we found unworkable and we did not change
12 anything in our recommendation.
13 The most unwork -- one of the most unworkable
14 elements is the monitoring and reporting as proposed in
15 that alternative because it did not include any
16 indicators to show control of waste discharges; no
17 indicators to show pollution reduction at individual farm
18 level; no reporting on the results of groundwater
19 monitoring; and no reporting of the results of individual
20 discharge monitoring, which is only an option if a grower
21 wanted to choose it anyway, but, if they were to choose
22 it, that they wouldn't be reporting any of the results of
23 that monitoring.
24 Equally unworkable was the absence of time
25 schedules to show that management practices are
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1 effectively controlling discharges or reducing pollution
2 loading and that the milestones are inadequate.
3 I want to elaborate on what we found inadequate
4 about the milestones, as proposed in this alternative,
5 and explain the milestones in the draft agricultural
6 order and compare them.
7 The draft agricultural order includes a general
8 condition for all dischargers to comply with water
9 quality standards, protect beneficial uses and prevent
10 nuisance over time, by controlling their waste
11 discharges.
12 It also includes specific conditions for Tier 3
13 dischargers to control individual dischargers of
14 pesticides, toxic substances, sediment and nutrients, by
15 specific dates. So, for example, a condition says, must
16 control discharges -- nutrient discharges by October 1st,
17 2015.
18 Both the draft order and the farm bureau
19 proposal contain milestones. And these milestones are
20 indicators of compliance. They're not in of themselves
21 enforceable. But they're indicators of compliance with
22 the conditions of the order, and they give us some
23 indication of whether we're making water quality
24 improvements, both in discharges and receiving waters.
25 A side-by-side comparison of all the milestones
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1 in the farm bureau proposal and the draft order is
2 contained in the staff report, in section 7 of appendix
3 D. I'm not going to go over all of them, but I just want
4 to explain some of the general differences and give you
5 one example.
6 The milestones in the draft order apply to both
7 receiving waters and individual discharges for Tier 3
8 dischargers. The farm bureau proposal only includes
9 milestones for receiving waters.
10 The milestones in the draft order for
11 individual dischargers are indications of pollution
12 reduction and runoff from these farms. The milestones in
13 the order -- excuse me.
14 Most significantly, the draft order also
15 includes milestones for nitrate loading to groundwater
16 from individual farms. And there's no comparable
17 milestone in the farm bureau proposal for groundwater.
18 And, most significantly, the milestones in the
19 draft agricultural order represent greater water quality
20 improvement over shorter timeframes.
21 These milestones and timeframes are necessary
22 given the severity of the pollution.
23 They are also necessary so growers have shorter
24 term indicators to inform if and how they are controlling
25 their pollution in their waste discharges such that they
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1 can be provided the flexibility to use adaptive
2 management in response, and within the five-year term of
3 the order to improve their level of waste discharge.
4 The milestones in the draft order are
5 reasonably based on technical information that indicates
6 fate of chemicals in the environment and known pollution
7 control practices that have been measured to successfully
8 achieve similar milestones as in the timeframes proposed
9 in the draft agricultural order. And this information is
10 detailed in the staff report, mainly in chapter 3C.
11 So I want to show how this would relate to an
12 actual stream, the application of these two milestones
13 over time.
14 In order to do that, we have to convert the
15 farm bureau milestone, which is a 10-percent load
16 reduction, to a concentration, in order to compare
17 directly to staff's milestone, which is the water quality
18 standard for nitrate in drinking water of 10 milligrams
19 per liter.
20 So that's a concentration expression of the
21 milestone over a five-year timeframe.
22 So if flow stays the same, a 10-percent load
23 reduction is equivalent to a 10 percent concentration
24 reduction.
25 So, assume that this stream has a current
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1 nitrate concentration of 30 milligrams per liter. This
2 is a typical surface water concentration for several
3 waters in the lower Santa Maria River and Salinas River
4 watersheds.
5 If the farm bureau proposal is achieved in this
6 river reach, the concentration would go down by 3
7 milligrams per liter in 10 years, for an ultimate
8 concentration after 10 years of 27 milligrams per liter.
9 If the draft order's milestone is achieved, the
10 concentration will go down by 20 milligrams per liter in
11 five years, for a 67-percent reduction.
12 Let me remind you again at this point, that
13 these -- these milestones are indicators of progress. We
14 don't expect a waterbody, necessarily, that's meeting 30
15 milligrams per liter, to achieve 10 milligrams per liter
16 in five years.
17 But we do think that it's reasonable to expect
18 tens of milligrams per liter of reduction, if all of the
19 farms contributing nitrate loading to the surface
20 waterbody actually comply with all the conditions, that
21 that's -- it's reasonable to assume that 10 milligrams
22 per liter or -- or something in that vicinity could be
23 achieved.
24 And, again, that's -- that's related to the
25 evidence that we have, that we have waterbodies where
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1 people implemented management practices and were able to
2 achieve that level of reduction.
3 At the rate of reduction proposed by the farm
4 bureau group, it would take about 100 years for the river
5 to meet the 10 milligrams per liter concentration.
6 So this is just a -- the -- a table expression
7 of comparing the nitrate milestones for surface waters
8 between the draft agricultural order and for surface
9 waters for the farm bureau proposal. And, I apologize,
10 these got out of order because I meant to show you this
11 first.
12 Drinking water quality standard, 10 milligrams
13 per liter over five years, as an indicator of progress
14 and whether we're approaching that in -- in the draft
15 order versus a decrease in ni -- nitrate loads from the
16 current cooperative monitoring sites, which are the
17 receiving water sites in stream of 10 percent in 10
18 years.
19 And I just want you to note here that there's
20 no milestones in the farm bureau proposal for individual
21 discharge reductions; and, as well, not for groundwater.
22 Okay. Moving on to the environmental
23 alternative.
24 The environmental alternative was submitted as
25 a letter that expressed support for the components in the
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1 February 1st, 2010 preliminary draft order, but said the
2 draft order ultimately should be more protective of water
3 quality.
4 We incorporated some of the elements of the
5 environmental alternative, in terms of monitoring
6 requirements, increased erosion and sediment control
7 requirements, riparian area protections, and
8 clarifications to make it clear how one complies and
9 compliance would be determined.
10 Okay. We received 116 letters, comment
11 letters, by the comment submittal date of January 3rd,
12 2011. And those, again, were comments on the November
13 2010 draft order.
14 The comment letters themselves represent much
15 more -- or many more than 116 comments and suggestions,
16 because some of the letters were very lengthy and had
17 multiple comments that spanned quite a broad list of
18 topics, as well as the fact that many letters were signed
19 by multiple organizations and/or individuals.
20 And we posted all these letters on our web
21 site. So for - those who are interested should have by
22 now been able to take a look at what some of the nature
23 of those comments were. And I'm just going to focus on
24 sharing a little bit of our response to some of the more
25 common comments.
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1 The focus of the most common comments were
2 around tiering criteria, drinking water impacts,
3 groundwater protection, monitoring and some legal issues.
4 Okay. In terms of tiers and tiering criteria
5 - some of this is actually going to speak to some of the
6 issues that we've already talked about, so I hope it's
7 insightful and might clear up some of the -- our
8 responses to some of your questions.
9 We added proximity to public water supply wells
10 that exceed the drinking water standard for nitrate to
11 the tiering criteria for Tier 3, so that we'd have a
12 parallel criterion that was protective of groundwater or
13 -- or spoke to the threat to groundwater quality parallel
14 to those that we had already, that were about the threat
15 to surface water quality.
16 We removed the size or the acreage amount
17 relative to the use of pesticides. And this is because
18 we agreed with comments that the size of the operation,
19 when it comes to pesticide use, is not necessarily
20 indicative of threat to water quality.
21 And, you know, for example, that goes in part
22 to some pesticides are more toxic than others. So a
23 little bit has a bigger effect.
24 MR. JEFFRIES: Lisa, before you go on, can you
25 go back to the public water supply wells, and what is
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1 that -- can you give me a definition of that?
2 MS. MC CANN: Of what a public water supply
3 well is?
4 MR. JEFFRIES: Correct. Fifteen? Over
5 fifteen?
6 MS. MC CANN: Over fifteen connections with
7 people. Yeah. So that's fifteen connections.
8 MR. JEFFRIES: Okay.
9 MS. MC CANN: Okay. We replaced the term
10 "adjacent to." So there was a criteria that said if
11 you're adjacent to a waterbody impaired for toxicity or
12 pesticides, that that was a qualifying criterion.
13 And we changed that to say, if you are
14 discharging to that impaired waterbody, rather than just
15 adjacent to it. So there has to be the connection there.
16 And, again, this -- this more adequately
17 considers operations that are, in fact, actually
18 affecting water quality and don't just happen to be
19 nearby. So that'd be regardless of their proximity to an
20 impaired waterbody. So they could be farther away, but
21 if they're discharging directly, that would qualify.
22 We added this clarification that the executive
23 officer can add specific pesticides as a criteria, as we
24 have new information that supports that they are causing
25 toxicity along with chlorpyrifos and diazinon.
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1 And we added the sustainable in practice
2 certification that Angela spoke about earlier, because we
3 got a lot of comments that a certification such as that
4 should be allowable, if it's verifiable and there's
5 demonstrated evidence, which in the case of SIP certified
6 with the Central Coast vineyard team, we have evidence
7 that those farms are having minimal to no impact on water
8 quality.
9 We also broadened that to say that others --
10 other -- equivalent certifications could be submitted,
11 and the executive officer could then approve those, as
12 also qualifying criterion for Tier 1.
13 Okay. On the topic of drinking water and
14 conditions related to groundwater, we reduced the
15 frequency of groundwater sampling for Tier 3 dischargers.
16 I -- I think it was quarterly originally, and we made it
17 two events in the first year, so it's parallel to the
18 requirement the -- the number of events for sampling.
19 And that was in response to comments that the cost of
20 groundwater monitoring were -- were burdensome.
21 We also clarified that groundwater levels are
22 only required where existing well construction allows
23 ease of these measurements, to make it clear that we
24 weren't intending anybody to drill a new well, change
25 their -- their well construction or spend a lot of money
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1 on that in order to be able to measure wells and get some
2 baseline information from a suite of wells on levels.
3 And, again, that responded to comments where
4 people said they were concerned that this sounded like
5 they had to have new wells to meet that requirement.
6 And we had a requirement to install backflow
7 prevention devices was originally three years. We made
8 it one year because we received several comments that
9 said: Why allow so much time to continue a practice that
10 threatens, if not actually affects, water quality
11 directly?
12 CHAIR YOUNG: Aren't they already under some
13 requirement to do that?
14 MS. MC CANN: Most counties, but not all
15 counties, in our region have ordinances that require. So
16 that -- that covers the gap there.
17 Okay. We removed some parameters from being
18 required -- or in the surface water receiving -- surface
19 water receiving monitoring, such as, bacteria.
20 And this was responsive to comments, again,
21 about costs, but also that there were some constituents
22 that we originally had that are not -- don't appear to be
23 directly discharged or affected from or related to
24 agricultural discharges.
25 MR. JEFFRIES: Was that considered from road
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1 discharge, highways?
2 Because I know there was one or two letters
3 that talked about it, there was chemicals coming off of
4 highways onto their waterways.
5 Would they -- would they be responsible for
6 that cleanup?
7 MS. MC CANN: So -- so the removing the
8 parameters is not responsive to that.
9 The removing the parameters was specifically
10 because of the mismatch of the chemicals that we were
11 asking to be monitored in receiving water not coming --
12 not typically being used or generated by irrigated
13 agricultural activities.
14 MR. JEFFRIES: I don't think you answered my
15 question.
16 MS. MC CANN: I -- I don't think I did, either.
17 But I want to clarify that this -- this response to
18 comments did not --
19 MR. JEFFRIES: Maybe listening --
20 MS. MC CANN: -- respond to those comments.
21 MR. JEFFRIES: Okay.
22 MS. MC CANN: So -- so if you want to restate
23 your question, then I'd be happy to answer that. Or try.
24 MR. JEFFRIES: Well, I'll ask the question
25 again. But somebody in the staff surely can answer it.

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1 How do we handle the discharges from roadways;
2 highways, county roads and so forth?
3 Well, city streets are handled under their --
4 their orders that they have. And whether they
5 -- where they end up is another issue.
6 But I'm talking about -- well, yeah,
7 stormwater, whatever. But, you know, you take Highway 1
8 between here and Salinas, you've got multiple ranches
9 along Highway 1 that there is drainage.
10 MS. MC CANN: I believe Highway 1 would be
11 covered on the -- Caltrans has a stormwater permit.
12 So, yeah. If it's a state road, it's covered
13 under Caltrans for stormwater runoff and any pollutants
14 in stormwater. If it's a municipal road, it's covered by
15 our municipal stormwater program, and the municipality's
16 obligation to control runoff from roads.
17 If they are rural roads in rural areas that
18 don't fit into that, there might be a gap there.
19 MR. JEFFRIES: So you're saying that during the
20 monitoring process, if -- and I don't know if one of the
21 constituents is benzene -- or any hydrocarbons are
22 detected in that waterway, they're not responsible? Ag?
23 That farm is not responsible?
24 What happens --
25 MS. MC CANN: This -- well --

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1 MR. THOMAS: I'm not sure that I -- I
2 understand the question, if you're saying that -
3 pollution that runs off of Highway 101 onto a farm, who's
4 responsible for that pollution?
5 MR. JEFFRIES: Right.
6 MR. THOMAS: Under the law -- I'll be a --
7 practice being attorney here for a second -- both parties
8 are responsible.
9 MS. McCHESNEY: Well, let me clarify that. So
10 if a -- if a -- if a highway -- like, if Caltrans is
11 subject -- is -- discharges from the highway, Caltrans
12 has to have a stormwater permit and has to control those
13 discharges, and they would be responsible.
14 The farm would not become responsible for that
15 discharge.
16 MR. JEFFRIES: Well, I -- I understand that.
17 And -- and I knew that would be the answer.
18 But in -- in all practicalities, if that
19 constituent comes up with the monitoring and the testing
20 of the water, it's initially going to go to the farmer.
21 Now, is he going to have to hire an attorney to
22 prove that this is not his or her responsibility?
23 That -- that's the area that I'm looking at.
24 MS. McCHESNEY: I think it's a issue in every
25 dischargers that monitors. That there's -- of any

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1 program. They monitor, we get the information. Then you
2 evaluate the information: Is there reason to believe
3 that that particular discharger is causing that problem?
4 Then they would address it.
5 But I think they've attempted -- the staff has
6 attempted to have the monitoring program specific to the
7 kinds of chemicals that would come from farms.
8 MR. JEFFRIES: I understand.
9 MS. McCHESNEY: Not things that would come from
10 roads. And -- and they would evaluate that. Whether
11 that leads to further management practices or any
12 enforcement, would be evaluated based on the information.
13 It's not some automatic enforcement.
14 MR. JEFFRIES: But when you look at -- if you
15 take monitoring at the Salinas River or if you take it at
16 the Moro Cojo or if you take it at the Elkhorn Slough or
17 if you take it at Quail Creek, you're going to have all
18 those involved in that.
19 And so, as -- as a farmer, as the Jeffries farm
20 is saying, hey, that isn't my responsibility, is that
21 going to be accepted by the staff, or do I have to argue
22 somewhere down the line, or do I have to hire a legal
23 representation to -- to argue with -- with you, and say,
24 ain't my job?
25 MS. MC CANN: Could I make a couple comments,

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1 now that I understand where you're going better?
2 First of all, be very clear that the
3 constituents that we are recommending be monitored to
4 inform compliance with the conditions of this draft order
5 are those types of constituents that could reasonably be
6 assumed to be loaded from agricultural discharges.
7 If we were to find in monitoring for this order
8 that there are other constituents that are popping up
9 somehow that are signals, then we would be working with
10 growers to followup and figure out what is the source.
11 Additionally, in general, our CCAMP program
12 monitors parameters beyond what's required in this draft
13 order receiving water monitoring, exactly so that we can
14 find parameters that are coming from anywhere that might
15 be impairing our waters, and respond to that.
16 And my last point is, we have a parallel
17 program -- as you might recall -- the total maximum daily
18 load program, which is explicitly about following up from
19 constituents that are impairing our surface waterbodies
20 identifying all the sources to different reaches or
21 streams or estuaries, and making all the responsible
22 sources in loading for those.
23 So irrigated agriculture would continue to be
24 responsible for their portion of the contribution, if
25 roads or other sources are also causing similar chemicals

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1 or other different chemicals, then we would be involved
2 in a parallel process with those dischargers about their
3 waste discharges.
4 MR. JEFFRIES: Do we have a specific language
5 in this order that defines that?
6 MS. McCHESNEY: Mr. Jeffries, I'm still
7 confused about - what is your concern?
8 MR. JEFFRIES: Well, I'm -- my concern is,
9 these folks are working on a very slim margin to operate
10 their ranches.
11 And if we start making them require for other
12 people responsibilities; whether it's erosion or from
13 some other area, or chemicals off of a highway that's
14 responsible to Caltrans or the county perhaps -- then I
15 think it puts undue financial burden on the individual
16 farmer to make that happen. So --
17 MS. McCHESNEY: Okay. And I think that --
18 MR. JEFFRIES: -- and that's -- and that's
19 where, you know, clarification and -- most of these folks
20 out here, you know, they don't have legal staff on -- on
21 their -- you know, to be paid to -- to analyze and
22 interpret all these rules and regulations of exactly what
23 they're supposed to do.
24 MS. McCHESNEY: Okay. And I think that the
25 answer to the first part of your question is that the --

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1 the proposed order requires monitoring specific to what
2 is -- might come off of a farm. So that --
3 MR. JEFFRIES: Well, if it's --
4 MS. McCHESNEY: -- so they're not --
5 MR. JEFFRIES: -- if it says -- if that says
6 that --
7 MS. McCHESNEY: -- yeah. And that's --
8 MR. JEFFRIES: -- there, specifically.
9 MS. McCHESNEY: -- and the -- right. And the
10 monitoring and reporting program if -- if a farmer says
11 that doesn't fit our farm, they can request the executive
12 officer to revise and reduce the monitoring.
13 But, basically, there -- it's not requiring
14 people to monitor for things that aren't expected to be
15 on farms. And then, there's no suddenly jump to, oh,
16 we're now going to enforce against you because the water
17 body has this in it.
18 It's -- it's --
19 MR. JEFFRIES: Yeah.
20 MS. McCHESNEY: -- the -- the non-point service
21 policy and the waiver requires that then you evaluate
22 that information: Are my management practices working to
23 control my -- the discharges from my farm not from
24 somebody else's farm, not from the roads, not from
25 whatever?

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1 So it's specific to -- to that. And the waiver
2 law requires that there be monitoring to evaluate the
3 effectiveness of complying with the terms.
4 So there needs to be some monitoring and
5 followup, but it's not suddenly we're going to do
6 enforcement, you have to go hire an attorney. And that
7 isn't triggered by the way the order is written.
8 MR. JEFFRIES: Okay. I just want to make sure
9 that there is specific information in -- in that order
10 that says what you just said.
11 MR. BRIGGS: If I -- if I could add a comment,
12 Mr. Jeffries. The examples you're giving of major
13 waterbodies -- I think you mentioned Elkhorn Slough and
14 Quail Creek and so forth -- those waterbodies are - and
15 the receiving water are measured currently through the
16 cooperative monitoring program.
17 MR. JEFFRIES: Right.
18 MR. BRIGGS: And they are confluence points.
19 So that is more watershed scale monitoring, which isn't
20 just affected by agriculture.
21 So that's what we have going now already with
22 the existing order, and will continue with the propose --
23 proposal that we have here.
24 So we recognize that there are going to be
25 signals in that data -- min -- mineral results, for

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1 example -- where some of the elevations in certain
2 watersheds are from what comes out of the natural
3 formations; from the soil and the rock that are -- that
4 are in those watersheds.
5 So -- and -- and in other cases, it may be
6 affected by, as you say, runoff from roads. We have
7 coordination with the City of Salinas, municipal
8 stormwater program, where we have up-gradient,
9 down-gradient monitoring.
10 And we recognize that that will pick up
11 different signals, depending on what's draining to those
12 points. So we've been dealing with that already with the
13 cooperative monitoring program.
14 MR. JEFFRIES: Well, I -- I gave a
15 demonstration of large waterbodies. But I also used the
16 demonstration Highway 1.
17 And you got several fields of artichokes along
18 Highway 1, as well as strawberry fields, and brussel
19 sprouts and a number of other crops that you look at
20 between here and Salinas.
21 And they're all adjacent to a state highway or
22 a county highway. Those are not large waterbodies that
23 I'm talking about. But you would have runoff on those
24 particular farms.
25 And if that chemical is commingled with their

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1 testing, I just want to make sure that those folks are
2 not responsible for that runoff.
3 MR. BRIGGS: Right.
4 MR. JEFFRIES: That -- that's where I'm going
5 with that.
6 MR. BRIGGS: Right. And if -- if any of those
7 farmers -- and that's a big if -- were required to do
8 individual runoff monitoring from their farm -- and one
9 of the common problematic constituents from roadways is
10 copper from brake linings.
11 They're -- the growers would not be required to
12 analyze for copper. Another one is total petroleum
13 hydrocarbon --
14 MR. JEFFRIES: Asbestos.
15 MR. BRIGGS: -- from oil and grease.
16 MR. JEFFRIES: Okay.
17 MALE: They're not required to monitor for
18 that. So it wouldn't even show up. It wouldn't be an
19 issue.
20 MR. JEFFRIES: Okay.
21 MS. MC CANN: I think I'm going to start here
22 on the second bullet.
23 (Off the record)
24 CHAIR YOUNG: Go ahead.
25 MS. MC CANN: All right. I think we left off

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1 at the second bullet --
2 MR. JEFFRIES: Right.
3 MS. MC CANN: -- related to our response to
4 comments to some comments related to monitoring.
5 And the second bullet is referring to the fact
6 that we -- what did we do? What page am I on? Excuse me
7 a second.
8 Oh, we changed the individual discharge
9 monitoring toxicity test, so that they would be species
10 that were more indicative of pesticides like pyrethroids
11 that might become substitutes for chlorpyrifos and
12 diazinon so that we would have a backstop for being able
13 to track other known pesticides that are being used that
14 are also causing toxicity.
15 And that was in response to the comments along
16 the lines of what we spoke about earlier, where there
17 were comments that, if we just overly focused on
18 chlorpyrifos and diazinon that -- that we weren't
19 considering the other sources of toxicity.
20 So this is a way that monitoring helps us
21 indicate that better.
22 MR. JEFFRIES: Can you briefly say something
23 about the -- the species?
24 Because I know there was a -- at least one
25 comment letter that, you know, kind of criticized staff

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1 for picking a flea, you know, out of the host of types of
2 species for testing, and commented about that.
3 MS. MC CANN: It's standard.
4 MR. THOMAS: We -- we actually use --
5 MR. JEFFRIES: Did you guys make -- come up
6 with this list on your own, of species?
7 MR. THOMAS: No. There's a -- there's a
8 standard list of species that can be used for toxicity
9 tests. There are fish, algae and invertebrates and that
10 range of species available.
11 We use all three categories or all three
12 species; fish, invertebrate and algae. And so, the
13 toxicity results are based on --
14 MR. JEFFRIES: Who came up with the species
15 that can be chosen?
16 (Reporter clarification)
17 MR. BRIGGS: EPA, she said.
18 UNIDENTIFIED SPEAKER: EPA.
19 MR. BRIGGS: U.S. EPA.
20 MR. JEFFRIES: EPA.
21 UNIDENTIFIED SPEAKER: There's standard test
22 organisms under the most commonly used ones. Sometimes
23 others are substituted; for example, in brackish water,
24 where they're more appropriate.
25 MR. JEFFRIES: Okay.

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1 UNIDENTIFIED SPEAKER: But they're extremely --
2 typical test organisms used in permits throughout the
3 nation.
4 MR. JEFFRIES: Okay.
5 UNIDENTIFIED SPEAKER: And -- yeah.
6 MR. JEFFRIES: Okay. Thank you.
7 MR. THOMAS: And, Mr. Chairman, if a particular
8 species of fish is used or a particular species of algae
9 or an invertebrate, it is not necessarily to protect that
10 species. That is an indicator organism for that category
11 and for overall biological health.
12 MR. JEFFRIES: Okay.
13 MS. MC CANN: Maybe I should have clarified,
14 too. In this specific change it was simply for
15 indicating what type of toxicity we have. We changed
16 from algae to invertebrates, which are more sensitive to
17 these other types of pesticides, like pyrethroids.
18 So it's not the general toxicity test of all
19 the species.
20 And then we -- in response to lots of comments
21 about the -- the monitoring reporting program was
22 confusing, and some misunderstandings about some aspects
23 of it.
24 We clarified it by separating it into the three
25 tiers so that it was really clear which monitoring and

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1 reporting requirements applied to dischargers that would
2 fall into each of the three tiers.
3 Okay. In terms of some of the common legal
4 issues, we added language that clarified the law with
5 respect to confidential information, in response to
6 concerns that farm plans and some of the other plans that
7 would be submitted might contain proprietary information.
8 And we spoke about that quite a bit, earlier.
9 We deleted some prohibitions, such as the one
10 that prohibited the use of excess fertilizer. And we
11 revised others into general conditions.
12 So, for example, there was a prohibition on
13 having bare soil that could cause erosion and
14 sedimentation. And we changed that to a condition that
15 says dischargers must ensure that sediment from these
16 areas does not discharge as a waste into waterbodies and
17 negatively affect water quality.
18 This was responsive to comments that blanket
19 prohibitions are not authorized in waivers and that some
20 of the specific prohibitions were specifically for
21 activities that are outside the board's authority.
22 And, finally, we clarified that dischargers
23 must comply with water quality standards over time, by
24 controlling their waste discharges and reducing pollution
25 loading; that Tier 3 dischargers must meet specific

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1 conditions to control their individual waste discharge or
2 pollutant loads by a specified date.
3 And, as I discussed in detail earlier, that the
4 milestones are indicators of whether these conditions are
5 being met.
6 And this was responsive to comments that the
7 provisions related to water quality standards would
8 require immediate compliance with all water quality
9 standards without regard for the time -- for any time
10 schedules with the other considerations that we needed to
11 be making.
12 So, in summary, we considered several options,
13 the alternative proposals, as I summarized, and hundreds
14 of comments, and we made lots of changes. And I only
15 highlighted some of the most common in -- in the
16 presentation that I just made.
17 So, I'll now turn it over to Michael to
18 conclude our staff presentation.
19 MR. THOMAS: Okay. Just touch on a few
20 misunderstandings that we have heard multiple times.
21 One is that growers must drill monitoring wells
22 to meet the requirements of this order. And that's not
23 accurate. There is no requirement to drill wells.
24 The requirement is to sample existing wells.
25 That can be ag wells or domestic wells.

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1 Another is that groundwater sampling will cost
2 individual growers tens of thousands of dollars per year
3 -- per grower, per year. That's not accurate.
4 We estimate the cost for Tier 1 and Tier 2
5 growers at \$790 for the life of the permit; and for Tier
6 3 growers, approximately \$2,370, also over the life of
7 the permit.
8 We also heard that there's a prohibition of
9 tile drains. And that's -- that -- because of that, land
10 will be fallowed. There is no prohibition for tile
11 drains.
12 Also -- we've also heard that everyone has to
13 have a buffer strip of X feet, and that -- some of the
14 comments we've gotten are -- the high end that I've heard
15 is a thousand feet and that all that land will be taken
16 out of production. That's not accurate.
17 You've -- we've had an extensive discussion on
18 buffer areas this morning. So I won't go into that any
19 further.
20 Another is that dischargers must meet a
21 standard of 1 milligrams per liter of nitrate in surface
22 waters, which is not accurate. The order does not
23 require that in any way, shape or form.
24 Those are some pretty --
25 MR. JEFFRIES: Michael, does it require any

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1 nitrate standard in receiving waters?
2 MR. THOMAS: It requires compliance ultimately
3 with the basin plan standards, which is 10 milligrams per
4 liter, which is the drinking water standard.
5 There are conclusions and recommendations. A
6 couple of things I'd like to go over and in conclusion is
7 -- one of the things I want to talk about is the severity
8 of the problem, or emphasize the severity of the water
9 quality problems in our region.
10 As I mentioned this morning, the groundwater
11 pollution, the threat to public supply wells and the
12 actual contamination in public supply wells, shutting
13 down of these wells and abandoning the wells, treating
14 water and drilling new wells is a huge problem in our
15 region for many communities, especially disadvantage --
16 disadvantaged and smaller communities. And the problem
17 is getting worse, not better.
18 We've heard from -- and you're going to hear
19 today -- from some people that are affected by this water
20 pollution. We've heard from water providers in
21 municipalities that say their costs are staggering. And
22 we've documented some of those in our staff report.
23 And one water provider said that they cannot
24 drill water supply wells fast enough to deal with the
25 nitrate problem. And treatment is so expensive that

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1 they're still trying to drill new wells, even though it
2 can cost millions of dollars to -- for the entire process
3 of putting in a new public supply well.
4 The water board is the only agency with the
5 authority and the responsibility to deal with these water
6 pollution problems; both the groundwater problems and the
7 surface water problems.
8 And we are accountable for dealing with these
9 problems. It's our responsibility.
10 There are solutions. I firmly believe that
11 solutions will be implemented, and they will be
12 developed. And largely by the ag industry itself.
13 Organizations like the strawberry commission.
14 We've met with them multiple times, and they are a very
15 forward-thinking organization. I think they realize that
16 there are water quality problems, and they want to deal
17 with them.
18 I think that ultimately they will be the
19 leaders -- organizations like that will be leaders in
20 finding solution. I don't think it'll happen unless this
21 board takes meaningful action and establishes meaningful
22 requirements.
23 If the board does establish meaningful
24 requirements, you will find -- we will all find that
25 there are many experts in all -- various fields of

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1 groundwater and surface water treatment that are
2 currently not working in this arena; working in all the
3 other arenas that the board regulates.
4 And you hear from those individuals on a
5 regular basis. We have thousands and thousands of cases
6 that are not ag related. But we have people working on
7 those experts in the -- in the surface water and
8 groundwater treatment -- working on those cases. And
9 they are not bringing their expertise to bear on this
10 issue.
11 If the board adopts meaningful requirements,
12 that will happen. I think they will be working with
13 organizations like the Strawberry Commission and other
14 commodity groups to solve these problems.
15 Dischargers are accountable for the discharges
16 of pollution from their property. We talked about --
17 earlier -- extensively about discharges from roadways,
18 Caltrans, and Caltrans being responsible for those
19 discharges. That's true.
20 And all property owners are responsible for the
21 discharges of pollution from their property.
22 The public has a right to clean water. This
23 something that people have actually debated us on. I
24 have one comment letter that said the public is not --
25 does not have a right to clean water, that we're wrong

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1 about that.
2 Well, actually, we do. It's one of our highest
3 priorities. It is an established beneficial use. One of
4 our primary responsibilities is to protect drinking water
5 supplies and to correct the pollution of those supplies
6 when it occurs.
7 And no one has a vested right to pollute public
8 waters.
9 We've talked about how the order is reasonable
10 because it has three tiers and how we've been responsive
11 to comments. And we've changed the requirements in the
12 order and changed the tiers - actually created the tiers
13 and then changed them multiple times, based on comments.
14 There is a scale of requirements. For the
15 lower threat dischargers, there's a lower level of
16 requirements. For higher threat dischargers, a higher
17 level of requirements, just like the board -- just like
18 the approach the board has taken in every other program.
19 It's a well established approach with respect
20 to reasonableness.
21 Urgency? How urgent is this problem? I don't
22 know how it could be more urgent. I mentioned the
23 domestic wells, the threat to domestic wells and the fact
24 that we know that people in our region, in agricultural
25 areas, drinking from domestic wells, that the water is

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1 MR. BRIGGS: Or 12:00.
2 CHAIR YOUNG: Or 12:00. So I'm going to take
3 them now. And then we're probably going to break for
4 lunch, because we're going to be at about a quarter to
5 12:00.
6 And then because the next presentation is the
7 farm bureau, and that's 55 minutes, so - I don't want to
8 chop that up - so that can go all the way through.
9 So let me call these five.
10 Dale --
11 MR. BRIGGS: And how many minutes apiece?
12 CHAIR YOUNG: Yeah. That's the thing. I'm
13 going to give you a minute each. Okay? That's the
14 tradeoff in going now versus waiting with everyone else.
15 So that's what you're giving up by taking this
16 opportunity now.
17 So Dale Huss, Ken -- I think it's Bradley.
18 Looks like Debra Pembroke; Kevin Merrell and Eric
19 Lauritzen.
20 MR. BRIGGS: Also, Mr. Chair there's a woman
21 who came up to me at the break, and was -- said that she
22 had an appointment of some kind.
23 And I've been trying to spot you out there, and
24 I haven't been able to see you. So if you're -- if
25 you're still here, you could be part of that group, as
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1 well.
2 MR. JEFFRIES: Mrs. Myrick (phonetic), were you
3 -- you approached me because you didn't get a chance to
4 speak before. And you said you had to go back to Idaho.
5 Is that the case? Did you leave? Maybe she left
6 already.
7 UNIDENTIFIED SPEAKER: Or the other room.
8 MR. JEFFRIES: Maybe she's in the other room.
9 MR. BRIGGS: Okay. Well, they can hear us now.
10 So if -- if -- that's -- I don't know if it's the same
11 person or not, but if that one or two -- the one or two
12 people hear us over there, they can come on over.
13 CHAIR YOUNG: Okay. Go ahead, Mr. Huss.
14 MR. HUSS: Yeah. I have some handouts here for
15 the board, please. I've got a minute?
16 And I -- I guess I'm the lucky one.
17 First of all, I appreciate a lot of the
18 questions here by the board this morning. My name is
19 Dale Huss. I'm the general manager of Sea Mist Farms in
20 Castroville. We farm several thousand acres in the lower
21 Salinas and here in the Pajaro Valley.
22 On those 19 ranches, we have hundreds of
23 different owners, hundreds. As growers we care very much
24 about the water quality. We want to protect this vital
25 resource for many reasons. First and foremost, our
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1 livelihoods and those of our children depend on it.
2 We agree that improvements need to be made to
3 water quality. We're part of a group that created what
4 Senator Farr called a model of success.
5 We have shared responsibility to improve water
6 quality in our community. For example, we use recycled
7 water, both in the Castro project and --
8 That's a minute?
9 CHAIR YOUNG: That's a minute. But go ahead
10 and -- if you can wrap it up.
11 MR. HUSS: I'll -- I'll hurry and wrap.
12 CHAIR YOUNG: Okay.
13 MR. HUSS: - and -- and the Pajaro Valley
14 Watsonville project.
15 As a grower, I'm here today to tell you that
16 I'll be a part of those that take the lead to improve
17 water quality in our community, through the approach
18 you've listened to this morning. And that would've been
19 from the Farm Bureau Board.
20 And we have to blend science and practicality
21 to improve water quality for sustainable environment and
22 a viable farming community.
23 The update of staff's document represents a
24 massive transformation -- and this is really important --
25 costs of which we cannot evaluate in just two weeks. It
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1 does not take into account that the average grower will
2 not understand how to implement this waiver.
3 The grower is going to be lost in a sea of
4 regulation that's hopelessly flawed by its own complexity
5 and lack of understanding of what growing crops entails;
6 because it's not just science, but it's art.
7 The document ignores the risk to both personal
8 and financial risks that the growers undertake when
9 investing in growing a crop; for example, head lettuce
10 for a thousand dollars an acre per crop; artichokes
11 \$5,200 per acre, per crop.
12 And we -- and reading the staff's
13 recommendations, we believe they have severely
14 underestimated the cost that will be associated with the
15 implement -- implementation of a flawed piece of
16 regulation.
17 We are evaluating whether we'll have to hire an
18 individual, estimated \$150,000, just to understand and
19 help -- help us follow implement to regulation.
20 CHAIR YOUNG: Mr. Huss, I'm going to have to --
21 thank you for your comments.
22 MR. HUSS: That's the rest of my comments. And
23 I appreciate the opportunity to have addressed the board.
24 CHAIR YOUNG: Thank you very much.
25 MR. HUSS: Thank you.
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1 CHAIR YOUNG: Ken Bradley.
2 MR. BRADLEY: Hello. Thank you very much.
3 I'll try to be real quick here.
4 CHAIR YOUNG: You have a minute.
5 MR. BRADLEY: Yes. My name is Ken Bradley.
6 I'm a water distribution operator, level two. And have
7 maintained a single well at a small Christian school,
8 Anchorpoint Christian School in Gilroy, California.
9 It is a small non-profit with about 60 students
10 on eight acres. We're surrounded on three sides by
11 agricultural land.
12 And when I had started there, we -- I had to go
13 and post a sign that the -- you do not drink the water;
14 it's unsafe for human consumption.
15 I couldn't understand it and I couldn't explain
16 it to my community, why the water couldn't be consumed.
17 So we paid for -- we paid for the water rights,
18 and -- when we bought the property, and we pay a fee all
19 the time -- whenever we pump the water out.
20 This water normally would be safe to drink, as
21 it comes from the well, if people were not allowed to
22 contaminate it with no regulations or sense of
23 responsibility for their actions.
24 With all the potential hazards that we've had
25 in my seven years of being there monitoring this well,

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1 high nitrates are the only problem that we have had
2 reported.
3 Our well measures between 125 milligrams per
4 liter to 140 milligrams per liter, and our potable water,
5 according to the Department of Public Health, can't be
6 higher than 25 before we have to take action.
7 CHAIR YOUNG: Can you wrap it up, Mr. Bradley,
8 please.
9 MR. BRADLEY: Yes, I will.
10 The basic -- in closing, not -- I was going to
11 go into the cost of this, as well.
12 But, as you could imagine, that if we purchase
13 some good, clean water, we have a glass of water, and
14 then somebody comes to it and says, I'm going to pour
15 some nitrates in it, for whatever reason and then tell
16 you and your family to drink it, we would all fight not
17 to have that -- those nitrates put in the water.
18 So that is why I support the regulation to
19 protect the human health and the environment that will be
20 strong enough to restore the water back to being clean
21 and healthy.
22 CHAIR YOUNG: Thank you for your comments.
23 Debra Pembroke. And then Kevin Merrill.
24 MS. PEMBROOKE: Hello. I'm Debra Pembroke.
25 We think it is a mix-up with the cards.

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1 Because I can actually stay. But --
2 CHAIR YOUNG: Okay.
3 MS. PEMBROOKE: -- Gina's name was -- so I
4 think that was supposed to be Gina's card.
5 CHAIR YOUNG: Okay. And who's this?
6 MS. LANGHOWT: Okay. My name's Gina Langhowt.
7 CHAIR YOUNG: Did you --
8 MS. LANGHOWT: I have a card, as well.
9 CHAIR YOUNG: You submitted a card?
10 MS. LANGHOWT: Yes, I did. Yes, I did.
11 CHAIR YOUNG: Gina --
12 MS. LANGHOWT: Gina Langhowt.
13 CHAIR YOUNG: Okay. So pull her --
14 MS. LANGHOWT: It might be under Regina.
15 CHAIR YOUNG: Okay. Go ahead.
16 MS. LANGHOWT: Okay.
17 So I am here today in solidarity with the
18 people who live in San Jerardo. I will leave their story
19 for them to tell.
20 But I wanted to say a couple of things. I have
21 a PhD in community psychology, which is essentially the
22 public health area of psychology. So a few comments.
23 One, in terms of the pesticides, there are 75
24 pesticides in the literature that have been shown to be
25 toxic. These regulations only deal with two of them

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1 because the staff has determined that these are the two
2 that are the most robust.
3 In the literature, however, there's a
4 difference between a small literature and a literature
5 where there is disagreement in the literature. So I
6 would encourage the staff to think about that difference.
7 Is -- these other 73 toxins, are they
8 considered to be -- is there argument, right now, over if
9 they are toxic or not, or is the issue just that there is
10 a small number of studies?
11 And I would encourage you to include the
12 literature that says that there's a small number of
13 studies, but where everything is pointing in the same
14 direction.
15 And, finally, I want to say that in terms of
16 the public health issue here, this is a public health
17 issue. People's lives are at risk. And I understand
18 that you need to take multiple stakeholders' perspectives
19 into account.
20 I would also ask you to consider the value
21 associated with the claims that those different
22 stakeholders are making. The claim of a human life -- of
23 human lives is a very high priority claim.
24 So I would urge you to pass a set of
25 regulations that will protect human lives. Thank you.

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1 CHAIR YOUNG: Thank you for your comments.
2 Mr. Merrill. And then, last speaker would be
3 Eric Lauritzen.
4 MR. MERRILL: Thank you, Chairman Young. And
5 thank you for allowing me to speak before lunch.
6 I'm here today representing the Santa Barbara
7 County Farm Bureau, as we represent a diverse membership,
8 from avocados to zucchinis, large and small growers that
9 farm a variety of soil types and topography. We also
10 represent ranching families that have been a part of the
11 land for generations.
12 Much like the diverse farming operations spread
13 out across Region 3, the key word here is diverse. Any
14 regulatory program dealing with agricultural, needs to
15 recognize its diversity.
16 I was pleased to hear Chairman Young with the
17 comments, during the board workshop in San Luis Obispo,
18 that perhaps a more focused approach over a longer period
19 of time that would prioritize waterbodies specifically
20 looking at diazinon, chlorpyrifos or nitrates would be
21 beneficial.
22 Limit the scope of a renewed waiver to the
23 highest priorities. Instead, even after several ag
24 representatives met with staff to point out serious
25 problems with their initial draft, no meaningful changes

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1 were made.
2 In fact, staff added more regulatory language
3 that includes storm water issues, as well.
4 We've done enough monitoring throughout the
5 region to know where the impaired areas are. We need to
6 focus our resources on those areas, partner with growers
7 and other agency to fix the problem, utilize the best
8 science without regulating growers out of business.
9 Staff proposal, as written, is far too broad
10 and cumbersome. Adopting it will not result in water
11 quality improvement.
12 I urge the chairman and the board to direct
13 staff to focus on known areas of impairment; work
14 together with the ag community; incorporate water quality
15 and prudent methods found in the ag proposal, along with
16 certain parts of staff proposal, and build a hybrid that
17 focuses on surface water impairment only.
18 Thank you very much.
19 CHAIR YOUNG: Thank you for your comments.
20 Eric Lauritzen.
21 MR. LAURITZEN: Chair Young, again, thank you
22 for the opportunity to speak.
23 As a regulator of pesticides, I just want to
24 point out that our programs are effective because of the
25 clarity in the laws and regulations that we deal with.

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1 And I urge you to look at the complexity of what is
2 proposed here and eliminate any ambiguity, as you can.
3 I'm also here speaking on behalf of Simon
4 Salinas, supervisor for the third district, that takes in
5 the largest part of the agricultural community acreage in
6 Monterey County.
7 I have a letter that I'd like to submit on
8 behalf of Simon Salinas, as part of -- of the record.
9 My office was just notified last week that some
10 of the proposed aquatic buffer zones that were included
11 in the Appendix F cost considerations did not appear
12 consistent with our office's data. And we submitted a
13 letter April of 2010 that outlined that -- that data.
14 Again, this letter that we have outlines
15 additional inaccuracies, and we provided updated analysis
16 in this letter related to the expected loss in gross
17 production value, based on the new proposed regulations.
18 It should be noted that our GIS analysis
19 indicates that between 5600 and 9500 acres -- depending
20 on the 30 or 50-foot buffer of farmland -- could be taken
21 out of production; not the -- the numbers that were
22 outlined in that Appendix F.
23 So I'd urge you to take a look at this letter.
24 I'll leave copies for you. And consider that as you make
25 your final rule. Thank you.

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1 CHAIR YOUNG: Thank you for your comments.
2 Okay. I think what we should do is break now
3 for lunch and come back in one hour, and then we'll start
4 with the Farm Bureau presentation.
5 MR. BRIGGS: So that'd be five minutes to 1:00.
6 CHAIR YOUNG: About five minutes to 1:00.
7 (Lunch recess taken)
8 CHAIR YOUNG: Okay. Before we hear from the
9 Farm Bureau, do we have any elected officials that would
10 like to address this issue; any board members,
11 supervisor, councilmen?
12 (Off the record)
13 CHAIR YOUNG: Are we ready? Okay.
14 UNIDENTIFIED SPEAKER: Hello. I'm a field
15 representative on behalf of the Assembly member Luis
16 Alejo.
17 CHAIR YOUNG: Okay.
18 UNIDENTIFIED SPEAKER: He is assemblymember for
19 the 28th Assemble District. And he is submitting a
20 letter today. And I would like to just read a portion of
21 that.
22 Questions on the sustain -- sustainability of
23 the staff's most recent proposed draft ag order have been
24 brought to my attention. The proposed regulatory
25

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1 approach appears to be more burdensome to agriculture
2 producers within the Central Coast region water quality
3 board area, than those created and recommended for other
4 regions.
5 This disparity in regulatory standards and
6 requirements may put the agricultural industry in the
7 Central Coast at a substantial competitive disadvantage
8 relative to other regions of the state.
9 The economic impacts to our local and regional
10 econo -- economies as a result of the loss of productive
11 agricultural land, crop production, property tax revenue
12 and agriculture jobs could have a ripple effect
13 throughout our region; one that is already experiencing
14 double-digit unemployment and an escalating economic
15 crisis.
16 I understand that the initial economic impact
17 survey estimated a loss of business revenue in the
18 Central Coast of 231 to 298 million, and estimated lost
19 tax revenue of 19 to 25 million.
20 Loss of labor could potentially range from 87
21 to 112 million. This survey also predicts 2,500 to
22 3,300 job losses.
23 All of these losses could total as much as 470
24 million from the Central Coast alone. Our agricultural
25 industry and our communities cannot afford these losses.

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1 I recommend the following:
2 Improvements must be made to water quality
3 standards. The proposal will do that through new
4 technology and efficiency improvements, with special
5 attention to environmental sustainability.
6 Provide incentives for farmers to improve their
7 infrastructure and practices to better meet water quality
8 standards.
9 Support the all-community stakeholders'
10 process, established under the 2004 ag waiver.
11 And further examine the economic implications
12 the draft renewal ag waiver, which states that prior to
13 implementation of any agricultural water quality control
14 program, an estimate of the total cost of such a program,
15 together with an identification of potential sources of
16 financing, shall be indicated in any regional water
17 quality control plan.
18 My office happily accepts the opportunity
19 presented by farmers for water quality to join
20 environmental advocates, social justice champions and
21 farmers, as they begin a community-wide dialogue to find
22 solutions addressing rural and environmental water
23 quality concerns.
24 We are look -- looking forward to finding
25 solutions that present win-win opportunities for the

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1 community as a whole. Thank you.
2 CHAIR YOUNG: Thank you for your comments. And
3 thank the assemblyman for us.
4 Any other elected officials or representatives
5 on behalf of elected officials?
6 Okay. We are now ready for the Farm Bureau
7 presentation.
8 MR. MERKLEY: Good afternoon, Chairman Young
9 and members of the board. Happy St. Patrick's Day.
10 Thank you for this opportunity to present the
11 ag proposal, a proposal that when -- when adopted would
12 be the most protective water quality program in the
13 world.
14 My name is Danny Merkley. I'm director of
15 water resources for the California Farm Bureau.
16 We will -- as -- as was previously stated,
17 we'll have 55 -- or 60 minutes to present with our panel.
18 We will reserve five minutes for the end of public
19 testimony today to -- to close. And I've been tasked
20 with the lovely job of keeping -- the -- our panel on
21 time.
22 So I have a fresh battery in my cattle prod,
23 and will do my best to get that done.
24 First up will be Brad Barbeau to present the
25 economic assessment on the Appendix F. Brad, thank you.

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1 DR. BARBEAU: Thank you very much. Good
2 morning, Chairman Young, members of the board.
3 My name is Dr. Brad Barbeau. I'm a -- I am
4 assistant professor of economics and entrepreneurship at
5 Cal State University Monterey Bay. And I've been asked
6 to speak to the economic impacts of the proposed waiver.
7 When I originally began this project, I had
8 hoped to be able to present a full cost analysis for
9 implementing the order. However, for multiple reasons, I
10 have not yet completed that analysis.
11 First, it's a very complicated project. The
12 requirements of the order are broad and the solutions are
13 not known. So determining the costs are very difficult.
14 And, I would note that, now adding in that we
15 may have up to 73 more pesticides to deal with is going
16 to further complicate that as we go forward.
17 Second, the new order published March 2nd
18 entailed many changes in too short a timeframe to be able
19 to respond for this meeting. I'm still working on the
20 analysis and I will make it available to you when it is
21 complete.
22 This morning -- this afternoon, I would like to
23 address some issues related to the economic and cost
24 analysis contained in Appendix F, the staff's document on
25 cost considerations.

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1 The authors of Appendix F correctly identify
2 the classic externality problem posed by water quality
3 issues on the Central Coast.

4 The important point here is that these
5 externalities impose costs on others they might not have
6 chosen to bear and they distort economic decisions about
7 levels of production and consumption.

8 Although the appendix identifies the
9 externality issue, it does not carry this approach
10 forward, and presents a set of observations and data, but
11 does not present a coherent analysis of either grower
12 costs or economic impact.

13 So when externalities exist, the economic goal
14 is to minimize the distortions caused by that
15 externality. We need to be aware that the policies
16 designed to address the externality will have their own
17 costs, monitoring and enforcement that need to be taken
18 to account as further sources of distortion.

19 These costs, which will be borne in part by
20 taxpayers, in part by growers, and in part by consumers,
21 are not addressed as such by the report.

22 If the objective is to address and reverse the
23 effects of the externality, we must be aware that as we
24 attempt to drive pollution to zero -- there we go -- we
25 reach a point where the costs of additional improvements

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1 rise rapidly and additional benefits become very
2 expensive.

3 Further expenditures waste resources for little
4 benefit. This point of diminishing returns is not known
5 currently, but the appendix makes no acknowledgment that
6 it even exists.

7 There we go. The implication is that the
8 socially optimal level of pollution is not zero. Because
9 there are costs involved in not polluting. Just as it is
10 impossible to have automobiles that generate zero
11 pollution, including electric vehicles, we would be
12 unlikely to ban automobiles simply on the grounds that
13 they pollute. The value of the services they provide is
14 enough to justify some level of pollution.

15 I would also argue that the optimal level of
16 pollution is not the current level. The optimization
17 rule of economics is to pursue pollution abatement until
18 an additional dollar spent on reducing pollution produces
19 a dollar's worth of benefits from the reduction in
20 pollution.

21 This principle should underlie the analysis in
22 Appendix F. So let's look at some of the -- the factors
23 that drive these tradeoffs, that are mostly not included
24 in the appendix.

25 First of all, the value chain in the ag system

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1 is very complex - we've heard a couple of examples of
2 that this morning - much more so than in most
3 industries.

4 This is because of the interlocking
5 relationships among landowners, growers, processors,
6 handlers, labor and vendors. These interlocking
7 relationships are important to maintaining a stable,
8 productive agricultural industry in the region.

9 They help participants to manage risk and to
10 weather the ups and downs that are an inherent part of
11 the agricultural production system; they both complicate
12 the implementation of the order and, in turn, the order
13 creates uncertainties for the future of these
14 relationships, uncertainties that may threaten the
15 viability of many of the growers that we -- we might most
16 want to protect.

17 And I think a concrete example that came up
18 this morning related to: Is it the landowner or the
19 operator who is ultimately responsible? And the lack of
20 priority that there was around that.

21 The impact of the order on these relationships
22 needs to be understood, and are not addressed in the
23 appendix.

24 The appendix is largely dismissive of external
25 threats to the region -- region's agriculture. Although

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1 ag in most of the region is very healthy, it is not a
2 closed system, and unavoidably competes with alternative
3 crops, other growing regions and in the export/import
4 markets. And it is worth noting that agricultural
5 exports are very important to the California economy.

6 In its discussion of grower income, the
7 appendix is not careful to distinguish between the
8 revenue generated by growers and the returns they earn on
9 their investment. The distinction is very important.

10 Grower revenue is income for the region. The
11 labor, the fertilizer, capital investment and other costs
12 to the grower are jobs and income for other entities in
13 the region. But what keeps the grower in business is the
14 return earned on invested capital.

15 Without earning a sufficient return, the grower
16 is unable to maintain the levels of investment necessary
17 to support a healthy and, I would add, a well-run
18 agricultural operation, which is what we're after here.

19 One of the tasks for my economic report will be
20 to identify the necessary rates of return and the affect
21 of the order on them. This has not been addressed in the
22 appendix.

23 While policy makers tend to look at the market
24 or industry-level impacts and outcomes, growers see the
25 impacts on and outcomes for their individual operations.

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1 These are very different.
2 If you are a grower, you're aware of your own
3 costs and the market prices for your commodities.
4 Survival requires you to keep your costs in line with
5 those market prices. An individual grower does not have
6 the power to raise market prices.
7 So any additional costs that they face will
8 threaten their profitability directly. The individual
9 grower cannot pass on these costs up the chain.
10 We have to remember that we're dealing with
11 perishable crops. At harvest, the farmer must sell it or
12 lose it; not like a car dealership, where you can leave
13 it on the lot and wait for prices to turn around. It's
14 gone if it isn't sold right away. We can't store them to
15 wait for better prices.
16 So to the extent that cost impacts are not
17 evenly distributed, there will be winners and losers.
18 The appendix nowhere acknowledges that the structure of
19 the order will create winners and losers, nor does it
20 attempt to identify what classes of growers might be the
21 most at risk.
22 The monitoring and reporting costs are subject
23 to economies of scale. The bigger the operation, in
24 general, the better able the operation is to spread those
25 costs over its output.

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1 It is common for regulation to result in a
2 level of consolidation in the regulated market. And it's
3 the small companies that lose.
4 Small growers who lease land from large owners
5 -- landowners or who employ the wrong combination of risk
6 factors are subject to Tier 3 status and all of the costs
7 associated with that tier.
8 And further economic impact may be in shifting
9 the patterns of land use, separate from production lost
10 to buffers. I'll address those in a moment.
11 Some ground may be prohibitive -- may become
12 prohibitively expensive to farm or become insufficiently
13 productive under the requirements of the order. As land
14 becomes less valuable to agriculture and, therefore,
15 commands lower rents, owners may seek alternate --
16 alternative uses for the land.
17 No assessment of land value impacts or land use
18 implications is contained in the -- in the appendix
19 document.
20 The Monterey County Ag Commissioner's office
21 put together, in the last few days, an analysis that was
22 referred to by -- by Commissioner Lauritzen, that between
23 5600 and almost up to -- potentially up to 10,000 acres
24 of farmland may be taken out of production for the
25 buffers.

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1 This is considerably different than the staff
2 estimates of 56 to 154 acres. The loss of gross crop
3 production value of between a hundred and \$167 million
4 per year would be represented by the creation of these
5 buffers.
6 And, remember, that's a hundred million dollars
7 a year not in lost profit to the growers, but absolutely
8 in lost income to the -- to the -- this is just Monterey
9 County data.
10 Appendix F, Section 3.2 contains a pretty
11 extensive discussion of the methyl bromide ban, in an
12 attempt to look at a parallel case to the water quality
13 regulation issues.
14 In my opinion, the methyl bromide ban from --
15 at least, from an economic standpoint -- has every few
16 characteristics in common with the issue at hand. And
17 that discussion is largely irrelevant to understanding
18 what's happening under this order.
19 Separate from several errors in the appendix
20 discussion of elasticities -- which I don't have time to
21 address here -- the appendix makes the claim that
22 increases in prices that the growers will receive will be
23 somewhat offset, at least, by -- I'm sorry - the --
24 makes the claim that increases in prices that the growers
25 will receive will somewhat offset the cost of the order

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1 to the growers.
2 However, we need to pay attention to the --
3 that's indicating that those costs are going to be passed
4 up the line, and ultimately to the consumer. I don't
5 believe we should be cavalier about raising consumer food
6 costs further than they have been raised.
7 And we need to recognize that individual
8 growers face far higher elasticities than the market as a
9 whole. An individual grower's abilities to raise prices
10 in response to higher costs is very limited.
11 The appendix does not take this into account in
12 this discussion of the elasticities. The elasticities
13 they have are all market elasticities.
14 Staff's economic and cost analysis, as is our
15 own, is incomplete and needs to be completed. Currently,
16 no one knows the economic impact of implementing the
17 order on the growers or on the agricultural industry, on
18 the region, or on the larger economy of the region.
19 Effective change processes include both clear
20 goals and a roadmap for achieving those goals. Once the
21 goals have been set, implementation planning has got to
22 define the hows. As I read the order, the hows are not
23 clear. The ag community needs time and resources to
24 develop them.
25 So, in conclusion, the cost analysis needs to

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1 be completed and then needs to be input to an economic
2 impact assessment.
3 It would be a world-class contribution to the
4 practice of environmental regulation to develop an
5 integrated economic and ecological model for a achieving
6 water quality objectives.
7 And finally, best management practices need
8 much more development to assist farmers in cost
9 effectively achieving the water quality goals.
10 Thank you very much for your time.
11 CHAIR YOUNG: Thank you.
12 MR. JEFFRIES: Do -- I do have one question for
13 the presenter.
14 CHAIR YOUNG: Go ahead.
15 MR. JEFFRIES: Did you do a -- a study on --
16 for every dollar that's generated, how many times it
17 turns over?
18 For instance, in retail cities, look at retail
19 sales, it turns over \$10 -- ten times.
20 DR. BARBEAU: Correct.
21 MR. JEFFRIES: Did you do an analysis on
22 agriculture?
23 DR. BARBEAU: I have -- I have not gotten to
24 that stage yet. That will be a part of the analysis.
25 That's an important part.

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1 MR. MERKLEY: Okay. Next we'll have Dr. Letey
2 and then Robert Dolezal make technical comment and
3 presentation.
4 DR. LETEY: Good afternoon.
5 Go back to the original, please.
6 One of the key things on there was -- and the
7 reason I'm here today -- I can trace back to 1994. I was
8 appointed a member of the technical advisory committee by
9 the state water resources control board.
10 And our charge was to cope with the very thing
11 they're dealing with now.
12 Is to come up with alternatives and ways to
13 reduce groundwater contamination from agricultural. It
14 is on the basis of that I can trace back ultimate events
15 to now.
16 So -- click through.
17 The TAC, at that time, recommended the
18 establishment of nitrogen leaching hazard as the core of
19 the program. The hazard was to have three components:
20 the crop, the soil and the irrigation system.
21 However, it was not possible for the board to
22 implement anything because information was lacking to
23 quantify the index for the crop and the soil.
24 Now, the U.C. Center for Water Resources more
25 recently invested resources to develop the information

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1 necessary for the hazard index related to the crop and
2 the soil. I was personally involved throughout this
3 process.
4 I looked at every soil profile. I looked at
5 every crop and everything we knew about that crop, in
6 putting it together, and in -- also wrote the
7 supplementary material that is part of that.
8 And that hazard index can be found presently at
9 the site listed there.
10 A recent development, which is very positive,
11 because it required input for the soil series name - and
12 many farmers may not know what the soil series of any
13 particular field was; we now have a link to the U.C.
14 Davis, where you can link into that and find out the soil
15 series names for any location, which then allows them to
16 completely go through the process of -- of coming up with
17 the hazard index.
18 Now, the present three-tier approach is
19 consistent with the TAC recommendation. However, the
20 details of information differ greatly.
21 I looked at Appendix B, Table 4, which contains
22 the proposed nitrate loading risk factor criteria. It
23 completely guts the University of California hazard
24 index. The soil factor is completely eliminated.
25 That's just like saying the body doesn't need

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1 the heart or the lungs. Just like the heart and the
2 lungs are vital organs to the body, the soil is a
3 critical factor in nitrate loading.
4 Two major factors which contribute to the
5 loading is -- one is denitrification, which completely
6 removes nitrogen from the system.
7 I was interested this morning, hardly anything
8 was mentioned about denitrification in this whole
9 process.
10 The other is the water movement through the
11 soil, which carries the nitrogen.
12 Those are the two main factors on the load.
13 Both of those are intimately tied to the soil profile
14 characteristics, and you cannot come up with a reliable
15 index by neglecting the soil.
16 Secondly, nitrogen in the irrigation water has
17 been added, so that the higher the nitrogen in irrigation
18 water, the higher up the -- the load risk.
19 Well, any farmer who has a high nitrogen
20 content in their irrigation water would be a complete
21 idiot to allow that to increase the load to groundwater,
22 rather than using it as a resource to decrease the amount
23 of nitrogen they apply in their fields.
24 Also, there are the impact of the sprinkler --
25 it needs to be adjust a little bit. And I won't go into

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1 that.
2 Now, as -- after the comments this morning, I
3 had thoughts on -- on the crop part, but I'll pass
4 because that's not part of my prepared statement.
5 Now, turning to another matter, one thing you
6 need to recognize is the nitrate concentration in soil
7 below the root zone is not correlated to the load. And
8 what we're trying to do is reduce the load. What we're
9 trying to do is induce management to decrease the load.
10 And, therefore, measuring that concentration is
11 not even an index whether the farm management is good or
12 bad, for the purposes that we're intending it, and that
13 is, to reduce nitrate load to the groundwater.
14 Therefore, dictating multitudes of dollars that
15 are required to measure this concentration, which has
16 really almost no meaning to what we're trying to achieve,
17 I consider economic folly.
18 And that needs to be understood, the main thing
19 to understand, because very often we are hearing nitrate
20 load and concentration being presented synonymously.
21 They are not. The nitrate load is the concentration
22 times the water flow.
23 And what we can measure, the concentration, we
24 cannot quantitatively measure water flow. That is
25 extremely difficult, very expensive and, therefore, we

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1 cannot quantitatively measure the thing we really want to
2 have. What we'd like to do is quantitate the load, but
3 we can't do it.
4 So, the next best thing is to monitor -- let me
5 -- okay.
6 Now, I have taught environmental science
7 courses for over three decades. I completely understand
8 the significance of monitoring, dealing with enviro
9 quality matters.
10 So it's not a question of whether do we monitor
11 or not monitor. The question is: What do we monitor?
12 What we really -- the thing that's going to
13 dictate what goes down is the farmer management. And we
14 can, and should, monitor and focus attention on
15 monitoring the farmer management. And -- and induce
16 those management practices that lead to reduced loading.
17 And that the effort and attention be paid to -- to that.
18 And sort of summing all this up, I find there
19 are major shortcomings in the scientific and economic
20 content of the draft order that must be fixed if you
21 expect that your desired goals will be achieved.
22 First of all, going back to assigning these
23 things in the tier, if you mess up assigning them to the
24 right tier, you have messed up everything thereafter.
25 And I propose that the criteria using to

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1 establish the tiers is vastly flawed and needs to be
2 fixed up.
3 Thank you.
4 CHAIR YOUNG: I have a couple of questions for
5 you, Dr. Letey.
6 If you could stop the clock, too.
7 If you could go back a slide.
8 So your suggestion is to focus on monitoring
9 management on the farm.
10 DR. LETEY: That is where you're going to get
11 the return.
12 CHAIR YOUNG: Okay. And ultimately aren't you
13 looking at trying to manage the application or use of
14 fertilizer?
15 DR. LETEY: That becomes part of it.
16 CHAIR YOUNG: And what tool do you use?
17 DR. LETEY: What tools do we use?
18 CHAIR YOUNG: What tool should a farmer use,
19 then, to know when is enough fertilizer, when is too much
20 fertilizer, given that condition?
21 DR. LETEY: Okay. We have had years and years
22 of research at the University of California.
23 We have a lot of technical information related
24 to fertilizer and irrigation management that can be
25 utilized in terms of management.

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1 Let me now refer back to the hazard -- hazard
2 index, when we have the crop. If -- for those -- for
3 example, all the crops we have listed with high hazard,
4 each crop has a different reason for having high hazards.
5 And on that hazard index, you can click to that
6 crop and it will tell you what it is about that crop that
7 makes it a high hazard. And it also, then, suggests
8 different alternatives and practices that you might use
9 to mitigate that particular thing.
10 And it's not going to be the same for every
11 crop.
12 CHAIR YOUNG: Can you -- can you give me a
13 couple of examples, for like broccoli or something else,
14 like lettuce?
15 DR. LETEY: Okay. There are some -- well,
16 first of all, if they have a shallow root system, one of
17 the key things is that, because you have a shallow root
18 system, you can't really get water to flow and anything -
19 - anything that's carried below the root zone is gone.
20 And so you have to really, really monitor your
21 irrigation, timing and things, not to over irrigate at
22 any one given time.
23 And this is why, when you go to a sprinkler or
24 the micro irrigation systems, it moves it down in terms
25 of a hazard.

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1 Now, there are some crops -- and I -- I don't
2 remember in detail all these things -- that just by
3 necessity to grow a good harvest, means that there's
4 quite a bit of nitrogen left in the soil after the crop
5 is removed.
6 And if you have that, then you can possibly
7 need to grow a cover crop, before the rain comes, to
8 remove that nitrogen so it doesn't get leached down.
9 Or, there's some crops that there's a lot of
10 residual vegetative matter left on the field. And
11 vegetative matter contains nitrogen. And that nitrogen
12 will become mineralized during the year and available for
13 next year.
14 Many farmers, in the past, ignored the
15 contribution of nitrogen from the residue of the previous
16 crop. That, then, can be entered into the management
17 scheme. We have the knowledge of looking at each of
18 these things and coming up with approaches to evolve the
19 high yield.
20 And, let's make one thing straight, we are
21 never ever - scientifically impossible to completely
22 eliminate any discharge. That is simply not
23 scientifically possible.
24 But the key is that there are many things we
25 can do to reduce it. But it's going to be very site

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1 specific. And this is why I'm saying the focus has to be
2 on the management.
3 CHAIR YOUNG: Okay. Well, can we reduce the
4 discharge so that it's not going to exceed a receiving
5 water standard?
6 DR. LETEY: Okay.
7 CHAIR YOUNG: Because that's what this all
8 boils down to.
9 DR. LETEY: Okay. That, then, is another -- I
10 guess, what I want to say.
11 I said that the concentration below is not an
12 indicator of good management or low management.
13 It is that you can have the high concentration
14 with a very low load. Or you can have a low
15 concentration with a very high load.
16 Well, any time you put a regulation or anything
17 and stipulate a concentration, you are -- you know, if
18 I'm a farmer and you give -- I can get a low
19 concentration just by pouring a lot of water through and
20 diluting it.
21 But you're a tremendous high load. Well, you
22 have to back off and decide: What is the goal?
23 And if -- from my point of view and
24 environmental regul -- environmental quality, it's the
25 load that is important.

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1 And you cannot specify concentration because,
2 if you do, you might actually get a counterproductive
3 result from your load.
4 CHAIR YOUNG: Here -- here's the conundrum.
5 We're not specifying new concentrations or
6 standards. They're in the law. We -- we're trying to
7 achieve standards that have been adopted for --
8 DR. LETEY: Okay.
9 CHAIR YOUNG: -- us to follow.
10 So how -- how does management address that?
11 MR. BRIGGS: Before -- before you answer that,
12 Mr. Chairman, I think you're doing a little bit of this,
13 because I believe you're talking about concentrations
14 down below the root zone, and I believe you're talking
15 about meeting standards wherever there's a receptor; like
16 a water well.
17 CHAIR YOUNG: Well, he -- the doctor had
18 mentioned kind of coming up with standards that may not
19 be achievable.
20 MR. BRIGGS: Right. But I think your question
21 was: Can ag be compatible with water quality standards,
22 say, at the point of use. Say for a well.
23 CHAIR YOUNG: Pretty much.
24 DR. LETEY: Oh, okay. I --
25 CHAIR YOUNG: Yeah.

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1 DR. LETEY: There's two issues. One is the
2 concentration leaving the root zone. And what,
3 ultimately, that resorts to, as far as the --
4 CHAIR YOUNG: Receipt --
5 DR. LETEY: -- well or some groundwater
6 somewhere else.
7 CHAIR YOUNG: Right.
8 DR. LETEY: Now, the load is the thing that's
9 going to affect the total groundwater. And that's why I
10 wanted to reduce that load.
11 My comment on the concentration -- and I think
12 you picked up -- is specifically on that below the root
13 zone.
14 Now, you -- another thing is that you say,
15 well, we have regulations. And we bypassed one of my
16 first lives, which -- you know, I'm an old man. And one
17 of the benefits of being old is you've lived many years
18 and be able to observe.
19 We can write anything into law. We can write
20 anything into a regulation. But if it is not consistent
21 with the basic physical chemical laws, you will not get
22 the expected results.
23 And so, yeah. There's a regulation there. And
24 what we tend to -- seem to say -- oh, we have regul -- we
25 have to follow that. As if, you know, a human law is

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1 permanently fixed. And it is, until we change it.
2 But then we don't seem to worry about those
3 laws that are absolutely fixed, that we cannot violate.
4 And those are the scientific, physical, chemical and
5 biological laws.
6 And what I'm trying to point out is the
7 physical, chemical, biological laws, if you want to
8 impose a regulation on the concentration leaving the root
9 zone, will not lead you to a lower load based on these
10 other laws.
11 CHAIR YOUNG: Right. And I don't think that's
12 what staff is proposing.
13 DR. LETEY: Well, I'm not --
14 CHAIR YOUNG: Well --
15 DR. LETEY: -- I'm just pointing it out.
16 CHAIR YOUNG: Okay.
17 DR. LETEY: I didn't say you were. I'm just
18 saying that if you're looking at that --
19 CHAIR YOUNG: Okay. All right.
20 DR. LETEY: -- that you shouldn't be.
21 CHAIR YOUNG: Okay.
22 And then, just so I'm clear. On one of your
23 slides, I thought you said -- well, if we could go to one
24 of the first ones. It was a comment about the nitrogen
25 hazard index.

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1 The -- the committee recommendations could not
2 be implemented because information was lacking to
3 quantify the -- the index.
4 Is there a -- an index that's in use today?
5 DR. LETEY: Well, it's available on that site.
6 CHAIR YOUNG: Okay. All right.
7 DR. LETEY: Now, whether you're using it or
8 not, that's -- that's the issue.
9 CHAIR YOUNG: Okay.
10 DR. LETEY: You have that resource to use
11 today, which the board did not have in 1994.
12 CHAIR YOUNG: Okay.
13 DR. LETEY: That's my point.
14 CHAIR YOUNG: Thank you very much.
15 DR. LETEY: Okay. Thank you.
16 CHAIR YOUNG: All right.
17 MR. MERKLEY: Chairman Young --
18 CHAIR YOUNG: Yes.
19 MR. MERKLEY: -- if I could just add real quick
20 -- and maybe this gives you a -- a nutshell response to
21 your -- to the very first question.
22 Growers today -- particularly the better
23 growers -- do pedio samples, do soil samples to know what
24 nitrogen, for example, in this case, needs -- there will
25 be for that particular commodity.

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1 In addition to that, we will add soil
2 amendments and things to change the Ph, change the makeup
3 of that soil to increase the -- the ability of -- of that
4 particular commodity to uptake those nutrients.
5 As a farmer, I know that. If you ask me much
6 more, I'm going to get in trouble.
7 CHAIR YOUNG: Okay. Thank you.
8 MR. MERKLEY: Well, okay.
9 MR. BRIGGS: Stop the clock, please.
10 MR. DOLEZAL: Chairman Young and honorable
11 members of the board, I'm Robert Dolezal of Dolezal
12 Consulting in Rocklin, California.
13 I'll testify today regarding my concerns about
14 many serious flaws I found in the scientific
15 justifications provided by the staff to support the draft
16 order.
17 My 35-year career has been primarily in
18 publishing and media. As a journalist, and later as a
19 publishing executive for many national publishing firms,
20 I edited, fact checked and verified accuracy in hundreds
21 of books, publications and wire service stories. And I
22 managed and evaluated the work of staff that performed
23 similar duties.
24 As vice president for Harcourt, Brace,
25 Jovanovich legal and professional publications, I oversaw

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1 the accuracy of the Gilbert Law outline series and the
2 Herbert Constitutional Law series, as well as medical
3 journals for our medical division, including their peer
4 review and check of citations of law.
5 In the course of my career, I have edited
6 hundreds of books in which highly complex and technical
7 science, including those across many fields of expertise,
8 had to be communicated clearly.
9 This experience makes me especially aware of
10 how facts and citations can be subtly manipulated and
11 twisted, while still retaining a cloak of truth, and when
12 they cross the line and assume new meaning.
13 I brought this expertise and my skills to the
14 work of reviewing the staff report and the draft order
15 for technical accuracy.
16 I've also performed highly sensitive technical
17 work for the government, and have previously held a top
18 secret code word national security clearance with a
19 special prefix.
20 In this assignment, I performed my work at the
21 request of the California Strawberry Commission. I
22 verified the staff report and scientific citations. I
23 also performed comparative literature searches of other
24 authoritative sources. And I randomly tested data
25 samples for accuracy.

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1 The goal of this work was to determine if the
2 information presented by the staff was accurate and
3 correct, and whether it was timely; that is, whether it
4 reflected the most current understanding of science at
5 the moment.
6 My review -- my review found numerous
7 distortions. Here's an example:
8 In one -- one place staff says that nitrogen
9 from fertilizer applied annually in the region totals
10 50,449 tons. Elsewhere, they say that it causes nitrate
11 loading to groundwater of 75,000 tons. Both are correct.
12 This exploits the public's ignorance of the
13 conversion factor between nitrogen and nitrate, and
14 allows the staff to inflate the apparent amount of
15 pollution they can attribute to crop production.
16 4.425 pounds of nitrate equals 1 pound of
17 nitrogen; the rest is oxygen. That allows the staff to
18 claim numbers in their May 2010 presentation that appear
19 to be over four times higher than they appear in the 1978
20 AMBAG chartered study, seen at the upper left.
21 But apparently this process was confusing.
22 They made arithmetic calculation errors in the conversion
23 of nitrogen here and in Appendix G of the order. And the
24 cropland estimate for current use of the -- in the
25 presentation does not agree with the number in the -- in
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1 the appendix.
2 Restating nitrogen as nitrate makes the public
3 think ag's contribution to the problem is worse.
4 Staff presents alarming maps, like this one of
5 Santa Maria Valley, to show drinking water wells with
6 nitrate contamination.
7 But when overlaid with all public drinking
8 water wells tested annually for nitrates by the
9 California Department of Public Health, in blue, many
10 more wells appear; 266 not 155.
11 Over the past 25 years, many wells with
12 nitrates either improved or were taken out of the system
13 and are no longer in the state water resources control
14 groundwater ambient monitoring and assessment program's
15 GeoTracker GAMA database.
16 A larger universe of wells means smaller
17 percentages in the pie chart. And I could find no health
18 standard for the yellow dot symbols used by the staff to
19 denote elevated nitrates.
20 Let's take a closer look at three data points I
21 sampled in Santa Maria: Arroyo Grande, a city in the
22 north; Siquoc, a little hamlet in the south; and Southern
23 Santa Maria itself.
24 In a single cluster in Arroyo Grande -- sorry
25 -- in a single cluster in Arroyo Grande, three out of 112
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1 drinking water wells have present nitrate exceedances.
2 There's no ag land nearby, just city.
3 Four other nitrate exceedance wells, in the
4 upper right, provide shallow monitoring for a site with
5 leaking underground storage tanks.
6 Let's look at them.
7 A red triangle marks that monitoring well
8 cluster, down in the lower right. Possible contamination
9 sources include the leaking tanks, a cemetery, an outdoor
10 landscape materials yard, school playgrounds, and nearby
11 Highway 101. It's unlikely that their nitrate readings
12 are caused by agricultural.
13 Staff emphasize -- excuse me.
14 The staff emphasizes the possible health impact
15 on small communities. And I share that concern.
16 I looked next at Sisquoc, a tiny agricultural
17 town in the southern valley. Where the staff's map shows
18 four wells, GAMA shows 89 wells in six clusters. The
19 offending well is in a cleft up -- up in the hills,
20 upstream from agricultural, but downstream from a Chevron
21 oil field.
22 In GAMA that well last exceeded -- excuse me --
23 last exceeded the health standard for nitrates more than
24 10 years ago. Thereafter, it failed to qualify as even
25 elevated by the staff's own standards.
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1 As we've seen, many alternate causes exist.
2 Here's another:
3 In Santa Maria, red dots surround a former
4 World War II army airfield, used today as a commercial
5 airport. Cal Fire also uses it as their base to load
6 aerial tankers with nitrate fire retardant.
7 In the Salinas Valley, in northern region
8 three, we see similar distortion. Staff shows 348
9 drinking water wells; GAMA has 953. And DPH requires
10 annual testing for nitrates of each of these wells.
11 In this close look at -- at Castroville, which
12 is surrounded by farms, there are 12 Department of Public
13 Health public drinking water wells, plus 12 other
14 drinking water wells. All are in compliance for
15 nitrates.
16 If agriculture invariably leads to nitrate
17 groundwater contamination, why not in this agricultural
18 setting?
19 These findings are all troubling. Digging
20 deeper, as this slide -- which is a bit difficult to
21 read, for which I apologize -- the ag waiver states on
22 the right:
23 Across region three, irrigated agriculture is
24 the primary source of nitrate pollution. They cite, as a
25 reference, a 1999 -- excuse me -- a 1990 report of the Ad
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1 Hoc Salinas Valley Nitrate Advisory Committee.
2 When I checked that source, it referenced only
3 the Salinas and Pajaro Valleys, not region three. It
4 said:
5 Agricultural operations represent the greatest
6 potential source of nitrate contamination. And that
7 reference was drawn from an earlier report in 1978, the -
8 - the, now familiar, AMBAG Study.
9 So what did AMBAG say 33 years ago? Quoting:
10 Agricultural land use contributes the highest
11 quantity of nitrogen in both valleys. Other land use may
12 have a more significant impact.
13 That's all agricultural land use, not just
14 irrigated agriculture. And they're talking about
15 nitrogen at the surface, not nitrate contamination of
16 groundwater.
17 And they say, agriculture is one -- one among
18 many significant sources, not the primary source.
19 The staff footnote made it appear that the
20 33-year-old finding was just 21 years old, and they
21 altered its meaning.
22 In the process, they also ignored millions of
23 dollars of research, funded by taxpayers of this state
24 and industry over the last 33 years, that shed light on
25 nitrate groundwater contamination, its sources and

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1 potential solutions.
2 They turn 1978's nitrogen source to nitrate
3 groundwater pollution. They widen Pajaro and Salinas
4 results to encompass all the Central Coast. They twisted
5 numerous causes into an ag-only responsibility. And they
6 changed agriculture's role from contributor to primary
7 source.
8 My sampling of these and other anomalies can be
9 found and read in my report, which is part of your public
10 record. My analysis of the data used by staff as
11 scientific basis for the ag waiver led me to the
12 following conclusions:
13 The draft order findings are not supported by
14 the staff's evidence and information provided to this
15 board.
16 The evidence, as data cited in the draft order,
17 should receive further independent review.
18 The board should obtain independent review of
19 all findings and information supporting those findings.
20 In performing my work on this peer review, it's
21 clear that agricultural might pay -- play some role and
22 bear some responsibility for measures seeking to limit
23 nitrate contamination of region three's groundwater.
24 I think there's no one in this room that would
25 disagree with that. But that role is not accurately

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1 portrayed by this staff in its report, nor do they
2 provide substantiation for their prescriptive remedies.
3 In the end, we're all environmentalists and
4 responsible stewards of the waters and soil of this
5 California. You and we deserve better science than this.
6 Thank you. I'd be pleased to answer any
7 questions.
8 CHAIR YOUNG: Yeah. The question I have for
9 you here:
10 Are you saying that all of the draft order's
11 findings are not supported by staff's evidence and
12 information, or just some of them?
13 MR. DOLEZAL: I said -- I am saying that those
14 that I tested --
15 CHAIR YOUNG: Okay. And those are the ones --
16 MR. DOLEZAL: I -- I found -- this is just a --
17 CHAIR YOUNG: Okay.
18 MR. DOLEZAL: -- small sample - found
19 significant difficulties in virtually every single
20 citation I looked into.
21 And I saw a repeated pattern of using data from
22 1978, 33-year-old data, and 1980, '85, rather than use
23 information for -- that was readily available from 2005,
24 2006, 2008 and 2009.
25 CHAIR YOUNG: Do you have any information of

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1 what the other sources might be?
2 MR. DOLEZAL: There's -- I've listed a number
3 of them on my earlier slides.
4 Livermore National Laboratory, U.S. Geological
5 Survey.
6 For example, in responding to comments of the
7 Strawberry Commission, there was a discussion made of
8 U.S. Geological Survey information encompassing
9 agricultural use of lands across the entire United
10 States.
11 Why not concentrate on the two studies that
12 were done here on the Central Coast, in the
13 Salinas/Santa Cruz/Pajaro area, Paso Robles area, and
14 Santa Maria/Santa Ynez areas, in 2006 and 2009, which
15 specifically show, with a scientific grid, where the
16 nitrate contamination is?
17 And it's substantially different than the map
18 you see in the staff report.
19 CHAIR YOUNG: Is it related to irrigated
20 agriculture?
21 MR. DOLEZAL: Some is related to irrigated
22 agriculture and some is related to the kinds of causes I
23 showed -- showed you here today.
24 CHAIR YOUNG: You mentioned Livermore.
25 MR. DOLEZAL: Yes. Livermore National

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1 Laboratory is conducting a radiological isotope analysis
2 of the age of groundwater basins, and they've been --
3 they've finished one, which is cited by the staff, over
4 in the Gilroy area, that was done for the -- in the Santa
5 Clara water area.
6 They are working on another one -- since their
7 wells are dotted all over the place here -- and are in
8 the GAMA database. And they're working on the age of
9 aquifers. And many of these aquifers are 30 years old or
10 a hundred years old.
11 So when you look at the specific information
12 that you -- you find in the -- in the reports or you look
13 at studies that are done over in the Central Valley - on
14 a dairy, for example, where you have absolute proof of
15 nitrate de -- denitrification in the soil, you've got a
16 six-foot layer of soil that's 20 -- 38 feet deep; between
17 38 and 45 feet, all of the nitrate disappears, it goes
18 from 200 -- roughly 200 parts per million down to .2
19 parts per million.
20 CHAIR YOUNG: This is in the Central Valley?
21 MR. DOLEZAL: In the Central Valley, but it
22 shows the same process.
23 So there's a whole body of evidence that's not
24 being cited in any of this reference material.
25 CHAIR YOUNG: Thank you very much.

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1 MR. DOLEZAL: Thank you.
2 MR. BRIGGS: I have a couple of questions.
3 CHAIR YOUNG: Sure.
4 MR. BRIGGS: So you -- you verified our -- our
5 figures, as you said. In the first couple of figures you
6 show the tons per year of nitrogen, you said those were
7 good.
8 And we have lots of contaminated wells. You
9 say we didn't show all the wells. But we showed wells
10 that are contaminated.
11 And wouldn't you agree there are too many well
12 that are contaminated?
13 MR. DOLEZAL: Yes.
14 MR. BRIGGS: So --
15 MR. DOLEZAL: The percentage -- your
16 percentages are wrong.
17 MR. BRIGGS: Okay. So with whatever the figure
18 was
19 -- 77,000 tons per year of nitrogen in contaminated
20 wells --
21 MR. DOLEZAL: Nitrates.
22 MR. BRIGGS: Nitrate.
23 MR. DOLEZAL: Eight-five hundred tons of
24 nitrogen.
25 MR. BRIGGS: Right. It's a lot.

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1 MR. DOLEZAL: It is a lot. It's --
2 MR. BRIGGS: Yeah.
3 MR. DOLEZAL: -- it's about 35, 40 pounds per
4 acre.
5 MR. BRIGGS: Right. And --
6 MR. DOLEZAL: Irrigated --
7 MR. BRIGGS: -- with contaminated wells in the
8 same are, you think there are other more significant
9 sources than that, generally speaking in the ag --
10 agricultural areas?
11 MR. DOLEZAL: There have been a number of point
12 sources identified that specifically have added to
13 nitrate and there have been a number of practices that
14 are no longer used that are represented on your map in
15 the timeframe of '78, that are no longer -- no longer
16 practical.
17 There -- there were a number of wells taken out
18 of commission for the -- for -- because they could not
19 protect the well bed. And those wells were contaminating
20 the aquifer.
21 MR. BRIGGS: Can we run back to the Arroyo
22 Grande slide example, that you had -- you had the close-
23 up of several areas and -- so the Arroyo Grande one.
24 MR. DOLEZAL: Not this one. This is the EPA
25 monitoring well. The one --

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1 MR. BRIGGS: No. This is the Arroyo Grande
2 one.
3 MR. DOLEZAL: Yes. There's one pre -- this is
4 not a drinking water well. This is an EPA lust
5 (phonetic) well.
6 MR. BRIGGS: Okay. You said the staff has
7 selectively used information to portray a different
8 picture, I guess.
9 It seems to me that the nearest, most likely
10 nitrogen source in this picture would be the ag field to
11 the lower right. That's the closest thing compared --
12 MR. DOLEZAL: That would be true of the
13 hydrology for the area didn't show that the high
14 mountainous terrain immediately to the left and up on the
15 -- on the picture showed the water flow towards the --
16 the Arroyo Grande Creek in the lower right.
17 There's also water from Arroyo Grande Creek
18 that is penetrating up into the area.
19 MR. BRIGGS: But you chose not to show that
20 there's an ag field immediately adjacent to this
21 monitoring well?
22 MR. DOLEZAL: I -- there -- it's downgrade in
23 the -- in the -- in the aquifer.
24 MR. BRIGGS: Yeah. I don't know exactly what
25 the gradients are, but we know that gradients --

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1 MR. DOLEZAL: I do know what the gradients are.
2 MR. BRIGGS: We know the -- we know --
3 MR. DOLEZAL: The gradients are down --
4 MR. BRIGGS: -- the gradients change.
5 MR. DOLEZAL: According to the hydrologist of
6 Arroyo Grande --
7 MR. BRIGGS: We know the gradients --
8 MR. DOLEZAL: -- they come from about where the
9 schoolyard is up there and it goes straight southeast.
10 MR. BRIGGS: Right. And we know that gradients
11 change with pumping patterns.
12 If you could go to the Castroville one.
13 MR. DOLEZAL: This is -- this is an EPA
14 monitoring well. They don't pump this well.
15 MALE: I didn't say they did. I said gradients
16 change with pumping patterns.
17 If you could go to the Castroville one.
18 MR. DOLEZAL: Yes.
19 MR. BRIGGS: These -- now, are these just
20 monitoring wells?
21 MR. DOLEZAL: Those are DPH drinking water
22 wells. Plus, I believe, 12 other public drinking water
23 wells.
24 MR. BRIGGS: So these are pumping wells that
25 are being used.

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1 MR. DOLEZAL: According to GAMA.
2 MR. BRIGGS: Isn't this in the seawater
3 intruded area?
4 MR. DOLEZAL: It is in the --
5 MR. BRIGGS: Wouldn't those --
6 MR. DOLEZAL: -- in the sha --
7 MR. BRIGGS: -- wouldn't those --
8 MR. DOLEZAL: -- in the 180-foot aquifer. Yes.
9 MR. BRIGGS: Wouldn't those wells necessarily
10 then be much deeper, because they want to avoid the
11 seawater intruding?
12 MR. DOLEZAL: I didn't see any evidence that
13 they were any deeper. They were in the 180-foot aquifer.
14 MR. BRIGGS: In the intruded 180-foot?
15 MR. DOLEZAL: Yes.
16 MR. BRIGGS: Drinking water wells?
17 MR. DOLEZAL: Well, you -- this is also an area
18 of reclamation.
19 MR. BRIGGS: Okay. That doesn't make sense to
20 me. Thanks.
21 CHAIR YOUNG: Okay. Thank you.
22 MR. BILL THOMAS: Mr. Chairman, members, the --
23 Roger, Frances, the -- Bill Thomas. I represent Ocean
24 Mist and RC Farms, that have a long history of dealing
25 with water quality issues here in this region.

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1 We are very disappointed there wasn't an
2 afforded opportunity to really try to get together and
3 narrow the ag -- the very aggressive ag proposal and the
4 staff proposal and has resulted in this schism of
5 interested parties in front of you.
6 The -- I was asked to point a couple of the
7 most pressing of the problem areas. And I think they're
8 very limited. It calls out for the -- trying to resolve
9 this.
10 The -- the most pressing -- and I won't speak
11 long on this because you've heard quite a bit about it --
12 there is nowhere in the world there is a regulatory
13 program limiting fertilizer to any particular level, much
14 less this 1.0 and 1.2, the proposal that is in this.
15 The -- we saw that there is a wide margin of
16 fertilizer use. I can certainly imagine some may be
17 using more than would absolutely be necessary, and we
18 need to deal with those situations.
19 But you can't just have staff pick out their
20 favorite fertilization level and impose it on
21 agriculture. There are reasons that there is a wide
22 separation in fertilization use.
23 Staff failed to point out the other, and even
24 more damning, provision; says that after three years,
25 that won't be the 1.0 limit, but it will be a restriction

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1 to only apply nitrate to the level that was removed in
2 harvest of the crop.
3 That will bring nitrogen levels way down, way
4 below the necessary level, the -- for effective plant
5 growth. The nitrate problem is an issue.
6 The other problem, major problem, is the
7 tiering system. As has been pointed out by members of
8 the board, this is absolutely an arbitrary -- the
9 provision - arbitrary on acres, which particular
10 chemicals you use or your location of growing.
11 If there is a tiering process, it has to be
12 tied to actual risk, not just saying these are our
13 favorite things, because we think big is bad and,
14 therefore, we're going to say that's probably risk.
15 Tiering should be tied to water quality
16 problems, not the size. Clearly, a 200-acre farm can
17 have significant problems and a 2,000-acre farm may not.
18 The other point under tiering, the -- and was
19 pointed out by members -- though classifications of any
20 tiers should be on each specific farm, not just add up
21 all your farm acreage from Santa Maria to here, the --
22 and if you hit a thousand acres, you're in Tier 3. Each
23 farm should be independently evaluated.
24 The -- it was pointed out by staff that there
25 are significant differences between each farm location.

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1 Again, it has to do with risk.
2 I would observe and thank you for the
3 clarification relative to tile drains, are not affected
4 here. Tile drains are very important. Our operations,
5 as Dale Huss pointed out, the -- do a lot of reclamation
6 -- the water reclaim work. And that's all present in the
7 tile drains.
8 A couple of things on the more legal side that
9 I would like to point out to this board, is: This board
10 does not have the authority to tell a farmer the -- what
11 particular crop you grow where or what particular
12 management effort that you input to do that.
13 You can't require that, under Porter-Cologne,
14 of a farmer, any more than you can tell PG&E how much
15 cooling water to use or Chevron how to operate a diesel
16 cracker.
17 The -- you can't -- this fertilizer-specific,
18 you have no specific authority in that area. And
19 Porter-Cologne doesn't let you get inside the operation.
20 It gives you unending authority to say what you can't
21 discharge. But it doesn't say, you know, what you can
22 input.
23 The -- it's true also of the riparian area.
24 You can't tell a farmer where to grow what, and where he
25 can't grow what. The -- you are not the land use
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1 authority.
2 The -- there are certain -- the benefits that
3 riparian vegetation can bring to water, there is no
4 question about it. There is also important
5 considerations -- the -- for human health -- the -- which
6 has been brought up here, and we need to find a balance.
7 And the -- but clearly, you just don't have that
8 authority.
9 The -- in the interest of time, I will end
10 there. I will say this:
11 You ought to fix this here in this region.
12 It's going to make no sense to have this controversy go
13 beyond an adoption, whatever you adopt, and go to the
14 state board. That is not the location to fix this.
15 And certainly, going from there to a Sacramento
16 Superior Court is not where this should be fixed. It
17 should be fixed here.
18 Thank you.
19 CHAIR YOUNG: I have a couple of questions for
20 you, Mr. Thomas.
21 MR. BILL THOMAS: Yes, sir.
22 CHAIR YOUNG: If you could stop the clock.
23 With respect to the criteria in the tiering,
24 was your comment that -- that the size criteria alone was
25 the arbitrary factor; or were you also commenting on the
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1 proximity to a 303-D listed body, the use of certain
2 pesticides as also being arbitrary criteria?
3 MR. BILL THOMAS: There's level of
4 arbitrariness in each, frankly.
5 The picking two pesticides -- and I would agree
6 that these pesticides -- because I do this water work in
7 a number of regions, the -- have been implicated.
8 If you were starting somewhere the chlorpyrifos
9 and diazinon, and maybe diaron and simazine, would be,
10 you know, on your first list.
11 But it's gone further here. You've said two
12 are terrible and everything else is fine. Pesticide
13 regulation has shown that there is a great deal of risk
14 that comes about by just shifting pesticide use from
15 pesticide A to B.
16 So, there are some arbitrariness there.
17 CHAIR YOUNG: Would -- would you prefer that we
18 just use the whole list?
19 MR. BILL THOMAS: The -- no, I think that we
20 need to, on all of these things, be guided by water
21 quality data, and deal with the specific problems where
22 they exist.
23 CHAIR YOUNG: Well, I agree with that. But I
24 -- my shift in -- in looking at this, is we should use
25 the whole list, because each of those have been
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1 identified as potentially causing toxicity.
2 MR. BILL THOMAS: And -- and --
3 CHAIR YOUNG: And we have data that shows
4 toxicity.
5 So --
6 MR. BILL THOMAS: I'm not sure that we have
7 data on toxicity of that many. I think that what they
8 would tell you is their data shows some evidence that
9 there might be some presence of them.
10 There's a difference between president --
11 presence and the exceeding the water quality standard.
12 There's certainly more than just C and D.
13 CHAIR YOUNG: Right.
14 MR. BILL THOMAS: The -- and that's one level
15 of arbitrariness.
16 CHAIR YOUNG: Okay. How about the proximity to
17 a public water well?
18 MR. BILL THOMAS: The --
19 CHAIR YOUNG: Now --
20 MR. BILL THOMAS: -- that's a brand new
21 provision.
22 CHAIR YOUNG: Right. But it appears to be
23 based on, not staff's favoriteness criteria, as you
24 mentioned --
25 MR. BILL THOMAS: The --
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1 CHAIR YOUNG: - but on the public health
2 department's criteria.
3 MR. BILL THOMAS: Well, certainly this: We
4 absolutely need to do things more aggressively than has
5 been done on nitrate to water. Not just here. I deal a
6 lot in Tulare County, it's a big problem there.
7 They have found there that dealing with those
8 things locally makes a lot more sense than having any
9 sort of, you know, grand regulatory effort, first off.
10 Secondly, the -- the -- it's a very new
11 provision that was put in, only a few days past, to have
12 the proximity to a public water source, which I think
13 they're using the definition that would lead you to 15
14 connections.
15 The -- there is still some arbitrariness in
16 that. Because are you up-slope are you down-slope, et
17 cetera? All these things have level of head scratch in
18 them, Mr. Chairman.
19 The -- but, again, that should only be to those
20 where there has been a linkage, a nexus, if you will,
21 between that well, that location and that particular
22 impediment, which here will probably be nitrates.
23 CHAIR YOUNG: Thank you.
24 MR. BILL THOMAS: Thank you.
25 CHAIR YOUNG: Okay.

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1 MS. FISHER: Good afternoon. Kari Fisher
2 representing California Farm Bureau and the seven county
3 farm bureaus throughout the region.
4 Similar to Bill, I'm going to quickly go over
5 some of the legal concerns that we have, in addition to
6 those previously raised in oral and written comments.
7 One big one is the fact that in this latest
8 draft, the notice of intent has been transformed into a
9 report of waste discharge.
10 We are concerned that the notice of intent, as
11 it is the form which growers complete stating their
12 intent to comply with the conditions within the order is
13 now being transferred into a report of waste discharge.
14 As we're all aware, reports of waste discharge
15 in -- in themselves, require certain -- or have certain
16 conditions and requirements; specific requirements,
17 conditions, certifications and CEQA compliance, as well
18 as fees.
19 And so, this new addition has some concern,
20 especially since no explanation is given as to why this
21 addition has been added.
22 There's concerns with the annual compliance
23 form. Today we saw just a preview that the annual
24 compliance form will be based on the electronic notice of
25 intent.

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1 However, we have not yet seen any form of what
2 that will be. We had no opportunity to review it or
3 provide any comments on it.
4 We have a lot of concerns about the expansion
5 of discretion that's been given to the executive officer
6 with this new draft. And that would be their discretion
7 without any board oversight or board involvement.
8 Some of which Chairman Young -- you've already
9 talked about earlier today - some of these inappropriate
10 expansions and delegations are with regards to revisions
11 of the MRP, should they be needed; updates to the current
12 -- excuse me -- tiering criterias, what those criteria
13 are in themselves and who would fall into what criteria.
14 Similarly, we have concerns with additional
15 monitoring and reporting requirements, the arbitrary
16 nature that can go along with that, and the follow-up
17 monitoring that could be then required; all of this
18 without any board involvement or any information brought
19 to the board, rather -- besides just: Look what we did
20 earlier.
21 There are also some issues with site specific
22 -- site specific nitrogen balance ratios, as earlier
23 described, due to the fact that soil is not utilized in
24 the determination, depending on where you're located and
25 your soil type, the fact that you may need to have

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1 additional ratio for your specific operation.
2 Additional concerns include the addition of
3 stormwater requirements in this latest draft -- draft,
4 which completely expands the breath and the scope of the
5 order. And also, along with that, the new riparian
6 vegetation requirements.
7 Some additional concerns include CEQA
8 compliance for the March 2011 draft, and if CEQA has been
9 complied with.
10 One big concern is the fact that this new draft
11 is so significantly different and deviates from the --
12 the November draft and the fall CEQA scoping notice, that
13 CEQA recirculation requirements have been triggered, and
14 CEQA recirculation was not conducted.
15 Therefore, it deprives the public, at large,
16 with an opportunity to test, assess and evaluate data,
17 and make an informed judgment as to the validity of the
18 conclusions to be drawn therefrom.
19 Therefore, there needs to be a full-on
20 additional CEQA review period, in which all public is
21 -- has the opportunity to comment.
22 Additional concerns relate to retention ponds
23 and the fact that they are being required to be lined,
24 and how that conflicts with other portions of the order,
25 which call for groundwater percolation.

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1 Thus, this inherent conflict will definitely
2 affect the ability to recharge groundwater and also, how
3 you're going to capture stormwater if your water within
4 your ponds is not able to be percolated.
5 We have concerns with groundwater and
6 individual discharge monitoring requirements. What is --
7 within each of those requirements, there's a lot of
8 uncertainty regarding your quarterly samples with your
9 nitrates for groundwater and also, all of the individual
10 components of the surfacewater, its use.
11 And then, finally, I'm going to just touch
12 briefly on the false impressions of the order being a
13 phased approach.
14 The order gives a false impression that it
15 contains proper time schedules for compliance and it is a
16 reasonable, phased approach.
17 This is a false impression, because the
18 conditions actually apply immediately. Throughout the
19 order itself, it specifically says that on the day that
20 the order is adopted, these compliance schedules and time
21 schedules are in affect.
22 Therefore, there really isn't a reasonable time
23 period in which growers can actually have any time to
24 utilize the best management practices to be -- come into
25 compliance.

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1 So you're setting up a failure to comply. And
2 there isn't adequate requirements built in, in which
3 growers are produc -- protected, as the executive officer
4 can use his discretion -- discretionary authority
5 whenever he wants to enforce it or look the other way.
6 So I'm going go to conclude there.
7 MS. DUNHAM: While Abby is doing that, I'll go
8 ahead. I'm Tess Dunham. I'm representing -
9 CHAIR YOUNG: Yeah. Your mike isn't on.
10 MS. DUNHAM: You want to actually hear me? No,
11 you don't.
12 My name is Tess Dunham. I'm with Somach,
13 Simmons and Dunn, and I'm representing the newly-formed
14 Farmers for Water Quality.
15 And now that we've had the opportunity to
16 express all of our concerns, we do want to also provide
17 you with some discussion as to a third-party group
18 alternative, that, you know, like your staff we have
19 further worked on our alternative in this time period and
20 want to share with you what we would propose as an
21 alternative to what you have set forth today. Or what is
22 in the draft order.
23 So, first, I want to say that, you know, we do
24 appreciate that the draft order has included a finding
25 that recognizes that there may be an opportunity for

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1 third-party groups.
2 And the finding is -- is that the dischargers
3 may comply with this order by participating in third-
4 party groups.
5 We've taken that finding and have decided to
6 help -- help all of you because we like to be helpful;
7 talk about what would that be, and how would that work
8 within the order.
9 And to that end, just so you know, if there's
10 any interest, we have prepared complete strikeout and
11 underlines of the draft order, an MRP, as well as a new
12 Attachment B that we're going to talk about, that would
13 be that functional third-party group within the confines
14 of the order that has been put forward to you today.
15 We have those available, if you are interested.
16 But, we'll go ahead and explain, at this point in time,
17 what that includes.
18 Abby, help.
19 So in setting up the alternative, what we would
20 propose is kind of an example of a new proposed order
21 provision. It would go -- something that would be within
22 the order and it would basically say that, you know,
23 within 90 days or -- or otherwise allowed by the order, a
24 discharger who is subject to this order could indicate
25 their intent to join the third-party group, similar to

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1 how it is done now with Cooperative Monitoring Program,
2 as long as that third-party group meets the requirement
3 specified in Attachment B.
4 And if they join this third-party group, they
5 would basically no longer be subject to the Tier 2 and
6 Tier 3 requirements within the order; and, instead,
7 through the third-party group, we could provide for some
8 of that monitoring and management practices and the
9 accountability that the board is looking for, as we
10 understand, with trying to set forth requirements in
11 Tiers 2 and 3.
12 So in our Attachment B, just to kind of set it
13 up for you, then Abby's going to talk about it, it -- it
14 would be a whole new Attachment B. It provides -- it's a
15 logical outgrowth from our December proposal. But,
16 again, like - like with yours, it's been refined to
17 better reflect what's before us today.
18 It implements the draft order finding, as put
19 forward by your staff for a third-party group, it fits
20 within the format that you currently have before you, it
21 simplifies requirements, and it clarifies accountability.
22
23 And Abby's going to tell you all about what
24 actually those terms and conditions would be.
25 MS. TAYLOR-SILVA: Hello. Abby Taylor-Silva,

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1 Grower-Shipper Association of Central California.
2 So what does that mean? For the participants,
3 and may include the owners and operators of land, who
4 choose to participate, the third-party group would work
5 with farmers to identify risks of operation for four
6 categories.
7 These include toxicity and irrigation runoff,
8 toxicity and sediment in stormwater, nutrients and
9 irrigation runoff, and nitrate leaching to groundwater.
10 Landowners and growers would be required to
11 implement management practices to achieve best
12 practicable treatment on control for those areas, with
13 medium and high-risk determinations.
14 They'd be subject to audit evaluations of the
15 enhanced farm plan and management practices being
16 implemented on their farm.
17 They would also be required to amend farm plans
18 and implement management practices based on the results
19 of their audit. And they'd be subject to termination if
20 they fail to amend their farm plan and fail to implement
21 management practices.
22 Just to reiterate, 100 percent of those who
23 sign up will be audited, subject to termination if they
24 fail to do what is asked of them in their audit.
25 Enhanced farm plans would include, for all

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1 participants, irrigation management practices, pesticide
2 management practices, sediment management practices, and
3 nutrient management practices.
4 For the third-party group, they would be
5 required to submit a notice of intent to be recognized as
6 a third-party group. A notice of applicability would
7 then need to be issued by the executive officer.
8 Within six months of receipt of said notice,
9 the group would be required to submit a general report,
10 outlining their process of priorities for audits. The
11 group would be required to audit all participants within
12 the term of the order.
13 They would also be required to make annual
14 reports -- which I will further explain -- submitted to
15 the Regional Water Quality Control Board. And they'd be
16 required to terminate and report terminations to the
17 board for participants not implementing management
18 practices in good faith.
19 This group would also work with participants to
20 provide technical services. Those might be in the form
21 of aligning growers with technicians that match their
22 management needs outlined in their audits; it might be
23 looking for grant opportunities or bringing in experts.
24 It would also assist participants in updating
25 farm plans and implementing appropriate management

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1 practices; encourage and provide assistance for
2 implementing collective treatment systems, such as an
3 engineering wetland; conducting educational workshops for
4 participants, and collaborating with a research
5 committee.
6 Reports to the board would include names of
7 participants in good standing in the group; number of
8 operations audited in that most recent 12-month period,
9 identification of watersheds or sub-watersheds where
10 audits were conducted, aggregated summary of the audit
11 results, general summary of assistance provided to
12 participants, summary of any educational workshops
13 conducted and a list of participants in attendance, and
14 summary of any other activities conducted by the third-
15 party group for the improvement of water quality.
16 I just want to state that, looking at these
17 elements, this -- these are an important illustration of
18 how this third-party group would provide the highest
19 level of individual farm accountability of any irrigated
20 lands program in the nation.
21 MS. DUNHAM: So we're always asked, well, how
22 does this comply and -- and comport with the law in
23 Porter-Cologne?
24 And we are running short of time, and hoping
25 that the Chair might grant us an additional five minutes

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1 for closing later on, since we -- we are going to be
2 hardly -- highly pressed.
3 But -- so it does comply with Porter-Cologne.
4 It -- it includes conditions and participants on the
5 third-party groups as required by Water Code Section
6 13.269.
7 It includes monitoring and it maintains the
8 current surfacewater monitoring program, but it also
9 includes an actual auditing, monitoring function of the
10 management practices and their being implemented just as
11 Dr. Letey has recommended.
12 It includes reporting requirements for that
13 third party. So it, itself, has accountability directly
14 to the board. And the executive officer maintains the
15 authority to terminate that third-party group if it is
16 not properly functioning.
17 And, at that point in time, all those
18 participants go directly back under the regional board's
19 order, as -- as it currently -- or however it ends up
20 being adopted.
21 And it requires implementation of prac -- of
22 management practices. But it provides that key
23 assistance to folks to teach them how to do what they
24 need to do. And that's something that we can do as
25 industry, that not necessarily that the board can.

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1 Big question is always: Does it include
2 accountability?
3 Absolutely. The third-party group has to be
4 approved. There's general reports that have to be
5 approved so you know what the third-party group's going
6 to do.
7 They have to submit annual reports. They have
8 to terminate participants if they are not participating.
9 And the third-party group, itself, can be terminated.
10 And, most importantly, that third-party group will --
11 will audit all of those participants, which is something
12 that the regional board administratively and functionally
13 just can't do.
14 And we're offering to do that, to make sure
15 people are implementing their farm water quality
16 management plans, which is something that the board,
17 unfortunately, can't do, even with a electronic annual
18 compliance or notice of intent.
19 And, just for interest of time, I mean -- go
20 for it, Abby. Why don't you end it up.
21 MS. TAYLOR-SILVA: All right.
22 This proposal supports our shared goal of clean
23 water in region three. It does not accept or endorse
24 staff's March 2011 draft order. And it very much
25 supports the third-party alternative.

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1 And with that, that concludes our panel
2 presentation. And we're very happy to answer any other
3 questions you might have.
4 CHAIR YOUNG: Okay. Does it include a
5 groundwater program or element?
6 MS. DUNHAM: Well, the -- the management
7 practice in the farm plan would include a -- a nutrient
8 management plan component that would be part of the audit
9 function.
10 So management practice is related to protection
11 of groundwater would be included.
12 CHAIR YOUNG: How about groundwater monitoring?
13 MS. DUNHAM: It does not include the
14 groundwater monitoring.
15 As we discussed at the workshop, we would, you
16 know -- folks would be encouraged to do voluntary
17 groundwater monitoring.
18 But as your staff indicated -- staff counsel
19 indicated at the February workshop, any volunteer
20 groundwater monitoring that a farmer would do, if it was
21 required by your order, would have to be submitted as a -
22 - as part of the public documents and would become public
23 information.
24 And there's just not a -- an interest at this
25 point in time that individual domestic and ag wells

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1 submit that type of data publically to the regional water
2 board.
3 I mean, I think it's kind of interesting. I
4 believe that information is proprietary for Department of
5 Public Health. So, it would seem, that you would think
6 that information should be proprietary here, as well.
7 CHAIR YOUNG: And then the accountability part.
8 What you're suggesting is that the growers,
9 themselves, are not directly accountable to the water
10 board; they're only accountable through the third party.
11 And --
12 MS. DUNHAM: They're -- well, they're --
13 they're both.
14 They're still accountable to both. The -- the
15 growers will still file a notice of intent with the
16 regional water board and would still be subject to --
17 generally -- as laid out -- although, we don't agree with
18 all of them - generally, with all of the conditions that
19 apply to Tier 1 and Tier 2 and Tier 3, or at least those
20 that we believe -- believe are appropriate.
21 So they would have some of that direct
22 accountability to the regional board. The regional board
23 would still maintain all authority and discretion to go
24 forward and inspect any farm. It would still take any
25 enforcement action for any violation of the order.

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1 What it does do is it -- but it -- it sets up
2 that third party to actually -- to go out and audit on
3 the farm, to make sure that those management plans and
4 those management practices are being implemented; and
5 would guarantee that every participant is subject to that
6 type of audit within the term of the order. Which I
7 don't know is something that the regional board and their
8 staff, could guarantee or do within a five-year time
9 period.
10 But there would still be a dual accountability
11 between the board and the individual growers and the
12 third-party group functioning in that fashion.
13 CHAIR YOUNG: Oh, okay. I think early on you
14 said that if anyone enrolled in the third-party program
15 would automatically be dropped out of Tier 3.
16 MS. DUNHAM: They -- they -- we -- the idea
17 would be that they would not be subject to the Tier 2 or
18 Tier 3 requirements, as you currently have set forth in
19 the order.
20 And, in lieu of that, they would be agreeing to
21 be subject to audits by the third-party group. They
22 would be agreeing that they're going to implement
23 management practices and --
24 CHAIR YOUNG: But -- but the same requirements
25 within Tier 2s and 3?

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1 MS. DUNHAM: Would not apply.
2 CHAIR YOUNG: Okay. All right. Thank you very
3 much.
4 Hello. Dr. Hunter?
5 DR. HUNTER: Thank you. Just a couple more
6 questions.
7 So Mr. Bill Thomas mentioned -- really
8 emphasized the idea that solutions need to be identified
9 that are local. And I'm taking that to mean that we're
10 talking about the individual operation.
11 And so maybe you can help me understand how the
12 monitoring and the audits that you would do as -- in this
13 third-party effort -- which I think is an excellent idea
14 to help assist the technical support that comes with that
15 and so forth -- coordination and so forth.
16 But how do you see the local solutions first
17 being identified? And if -- without understanding where
18 the actual source of the worst problems are occurring,
19 how are you going to encourage -- maybe you have a group
20 of 10 or 15 growers involved in one of these third-party
21 groups.
22 How then do you identify which one of the 10 is
23 going to have to do more? Where do those local solutions
24 come from? How do they get defined?
25 And what kind of timeframe, then, do we --

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1 would -- would we see coming out of this third-party
2 process?
3 Because I don't see that happening. I see
4 monitoring of implementation of management practices,
5 which is a huge step and very important.
6 But then where do we see what's effective and
7 what's not effective?
8 MS. DUNHAM: The -- and -- and we do have a lot
9 of detail in the strikeout and underlining and we just
10 don't have time in order to go through all the detail
11 that we have thought about.
12 A couple of the things that I think go to
13 answer your question, Member Hunter, is:
14 So the third-party groups, first of all, could
15 be one third-party group for the whole Central Coast, or
16 it could be on a commodity basis or it could be
17 geographically.
18 You could end up with a third-party group that
19 says, I'll take care of Monterey County. And, therefore,
20 you're focusing in.
21 One of the things that we have built in is that
22 in doing the audits, the third-party group would require
23 to -- to conduct them, first prioritizing in the most
24 impaired areas.
25 So we can try to focus in where are the

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1 problems and get to those growers and audit their farm
2 plans and their management practices in those impaired
3 areas to see: Who needs the help the most and who do we
4 need to work with?
5 And the third-party group can then assist them
6 in finding out: Who are the appropriate people at
7 Cooperative Extension or the NRDC or even the regional
8 board, that they should be working with to come up with
9 solutions, and what are the appropriate management
10 practices to address those high-risk impairments; whether
11 it's groundwater for one grower, and irrigation runoff
12 for another?
13 Because each -- every grower may have different
14 risks, based upon their operation. And so the
15 third-party group would be set up to function in that
16 manner.
17 And -- and I don't know if Abby wants to add
18 in, you know, some effort has gone into start building a
19 base for that third-party group now so it could hit the
20 ground running, or at least try to get something going if
21 the board was to go down this path.
22 So, Abby, I don't know if you want to add
23 anything on the work you guys have done.
24 MS. TAYLOR-SILVA: Sure. We're just looking at
25 -- we're also looking community partners, bringing

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1 community partners together and talking to different
2 researchers, different people representing sectors of the
3 community that are very, very diverse - social justice
4 organizations, people representing different watershed
5 organizations - and bringing them together to have
6 discussions so that we can understand the common goals,
7 priorities and needs for the future.
8 So that -- that would definitely be a -- a big
9 part of these groups.
10 DR. HUNTER: Well, I really do appreciate the
11 idea of doing things collectively and trying to maximize
12 resources and then the collaboration that may come in
13 sharing knowledge and experience.
14 But, on the other hand, it's been five years,
15 six years, seven years of seeing this program take shape,
16 with a lot of education going into the process. And I
17 think someone else also referred to Congressman Farr and
18 his view of the water quality coalition that's -- I don't
19 think it's the water quality coalition -- but the
20 Monterey Bay work that's gone in with the farmers.
21 And yet, we don't see improvement. So on a
22 collective level, we haven't seen that kind of targeted
23 response. And I -- I -- you know, I'll be interested in
24 seeing more detail on this new iteration.
25 But, again, I think to get to the individual

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1 level -- and I was glad to hear Mr. Thomas say solutions
2 are local. Yes, we know that individual operators need
3 to be identified in these areas, whether it's because of
4 the soil conditions -- not necessarily bad practices, but
5 because they are dealing with conditions that are
6 inherently going to result in greater contribution to
7 groundwater contamination, which is one of my biggest
8 concerns.

9 And I'm hearing that your program won't address
10 groundwater contamination. So --

11 MS. DUNHAM: Well, our program --

12 DR. HUNTER: -- there's some gaps here. I
13 think there's --

14 MS. DUNHAM: Our program does address --

15 DR. HUNTER: -- some gaps here.

16 MS. DUNHAM: -- groundwater contamination. It
17 just doesn't have a requirement for groundwater
18 monitoring.

19 And I think that's a key difference, is -- you
20 know, having a monitoring function doesn't necessarily
21 address groundwater contamination either.

22 But the -- the program and the third-party
23 group would definitely be looking at risks to groundwater
24 for people's implementation of management practices.
25 Absolutely. That is a very key component of it.

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1 And, I guess, we would also contend that in --
2 in working with individuals directly, we think this
3 program does that probably better than what the -- than
4 what the regional board could do on its own.

5 Because it is built and designed to get to
6 every participant within that term of the order. And I
7 don't think that's something that the regional board,
8 with its resources, can do.

9 And I'm not sure that just the, you know,
10 electronically filing of annual reports necessarily
11 guarantees that's being done either.

12 You know, I mean, to -- this is a sit down, go
13 out, look at the grower's operation, meet with them, see
14 what they're doing, tell them what they need to do
15 differently.

16 And that's something the third-party group can
17 do, that I'm not sure the regional board can go out and
18 inspect and say, you have a problem and you're violating
19 the order.

20 But they can't necessarily sit there and say
21 you should be doing X, Y and Z instead. The third-party
22 group can do that.

23 DR. HUNTER: One last question.

24 What is the timeframe? Because the -- what
25 you're talking about is below the sub-watershed level.

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1 You're talking about individual operations.

2 So are you talking about five years or ten
3 years? What is the --

4 MS. DUNHAM: What do you mean --

5 DR. HUNTER: -- timeframe?

6 MS. DUNHAM: -- a timeframe. I mean, as far as
7 -- I mean, we would -- if -- if the board was to adopt
8 this type of a program, we've built in proposed time
9 schedules where the, you know, participants or those
10 wishing to choose this -- this is a voluntary
11 alternative.

12 The grower would not have to make this choice.
13 But if they wanted to make this choice, then they would
14 have to declare their intent to the regional board within
15 90 days of adoption of the order.

16 And at the same time -- and it's a parallel
17 process -- the third-party groups would be basically
18 declaring and putting in a notice of intent to the
19 regional board within 90 days to say we want to be a
20 third-party group and do this function.

21 And then a general report would have to be back
22 to the regional board within -- I think it's six months -
23 - of the 90 days. And I would say you would have audits
24 up and running within the first year, at the very end of
25 the first year of the order.

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1 And so, you, basically, would be auditing 25
2 percent of the participants in a year, to reach 100
3 percent by the term of the order in five years.

4 So we're talking within the term of the order,
5 every participant would be audited at least once, with
6 the highest priorities going first.

7 DR. HUNTER: Okay. Thank you.

8 MS. TAYLOR-SILVA: And I -- if I may, I'd like
9 to just touch on what we've learned in the six years.

10 So we know that in -- in 2004, the ag waiver
11 was created to identify, qualify, quantify and evaluate
12 water quality. This proposal is really designed to
13 implement what we've learned.

14 And it's going to blend science and
15 practicality to improve water quality for a sustainable
16 environment and viable farming community. That's our
17 goal.

18 DR. HUNTER: So, I guess, the main difference
19 is creating the third-party structure and allowing --
20 because I don't think creating a third-party structure is
21 going to change which dischargers are operating with the
22 high-risk factors, that we're all concerned about.

23 So what you're proposing is a way to identify
24 these high-risk operators within your own process. And
25 you're saying that within a five-year period those people

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1 will be identified and practices will be developed, or
2 some alternative management practices will be designed
3 specific to that location.
4 And then, what kind of information would the
5 board see in order to understand what changes were being
6 implemented, how effective they are, what kind of
7 projected -- you know, where will we see projected
8 changes that are significant enough to --
9 MS. DUNHAM: Well, we --
10 DR. HUNTER: -- we could start to see the --
11 the standards being met?
12 MS. DUNHAM: What we would anticipate would be
13 that the third-party group would be required to report
14 back to the board annually, of, one -- and it would be
15 here's kind of what the annual report elements would be
16 - but, you know: Who are our participants who would -
17 the operations that were audited within this last,
18 nearest 12-month period?
19 We -- it would be an aggregated summary of
20 those audit results; i.e., you know, 10 percent of the
21 operations are implementing appropriate management
22 practices for their high-risk area, 90 percent are not.
23 But, now, where the accountability -- and I
24 think it's really important to understand -- is it then
25 wouldn't just end there.

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1 And the -- what we would propose is that the
2 third-party group would work with those individuals that
3 aren't implementing the appropriate management practices
4 and tell them and teach them, you know, this is what you
5 should look to be doing.
6 And if that participant doesn't follow through
7 and doesn't look like they're going to be implementing,
8 then the third-party group would terminate that person's
9 participation in the third-party group.
10 They could no longer participate in that group.
11 And we would notify the regional board that participant X
12 is no longer participating in the third-party group in
13 good faith, or in good standing, and they come directly
14 back to you.
15 Which is, you know, in all honesty, is going to
16 be a key to the regional board staff that we got someone
17 we may need to go inspect and check out. Because,
18 obviously, they're not wanting to implement third-party
19 practice -- you know, get appropriate management
20 practices.
21 So there is that direct accountability and
22 reporting function back to the regional board for those
23 that are not implementing management practices.
24 The idea is not to be a shield, an umbrella
25 protection, but to really help people conduct

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1 on-the-ground improvements.
2 DR. HUNTER: Okay. Thank you.
3 MR. JEFFRIES: Mr. Chair.
4 CHAIR YOUNG: Yeah. Mr. Jeffries.
5 MR. JEFFRIES: I also read your letter that --
6 from the Farm Bureau. And I thought that was an
7 interesting concept -- concept of using that type of
8 third party.
9 But, I'm sure you also read the staff's
10 response to that. And, you know, we talked about
11 economics and cost.
12 And who is going to fund this third party? And
13 who -- who is the third party -- the responsible people -
14 - who are they going to be?
15 And what is the cost? Where -- where are you
16 going to generate the funds?
17 MS. DUNHAM: I'll take part of it. And then
18 I'll -- I'll hit it over to Abby.
19 I would first say that, you know, as we said
20 early on, there -- from the December proposal that was
21 submitted, this keys off of that and has taken many of
22 the elements. It has been refined, and I think it has
23 tried to be responsive to some of the comments that staff
24 has made.
25 But, understand, we actually didn't get the

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1 staff report and the responses until about two weeks ago,
2 so we've been a bit limited on time. So we have tried to
3 respond to some of those concerns. And we've made some -
4 - some changes within this context, in order to be
5 responsive to that.
6 With regard to the cost and funding, Abby, you
7 want to --
8 MS. TAYLOR-SILVA: Sure. This would be a -- a
9 funding mechanism that is covered by the -- the growing
10 community.
11 The growing community that chooses to be a part
12 of one of these groups would then fund the group and fund
13 all that goes with it.
14 In terms of what would the qualifications of
15 the people carrying out the group's orders be, that would
16 be part of the professional requirements that would then
17 be submitted to the executive officer.
18 So that would be well understood, when the
19 executive officer makes their decision on the group
20 itself.
21 MR. JEFFRIES: Well --
22 MS. DUNHAM: It -- it would be self-funded,
23 much like the Central Valley groups are self-funded, and
24 for those participating, and it would be a similar
25 mechanism. Probably based upon risk.

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1 MR. JEFFRIES: Well, if you didn't have enough
2 participating, it wouldn't be worthwhile, because you
3 wouldn't be able to have the funding to do the things
4 that you need to do.
5 MS. DUNHAM: Typically, yes, that --
6 MR. JEFFRIES: But the letter that you sent to
7 us -- the Farm Bureau sent to us -- and there was a lot
8 of signers on that -- are those all going to participate
9 in this particular third party?
10 MS. DUNHAM: I don't know. I don't know if --
11 if that would be the case or not, Mr. Jeffries.
12 I mean, I think that our indication there are
13 -- are probably some groups that would encourage their
14 members. But it has been set up so it is a voluntary
15 choice -- choice by all individuals.
16 Because as -- if anything, you've probably
17 learned in your time on the board, farmers are an
18 independent lot.
19 MR. JEFFRIES: Okay.
20 MS. DUNHAM: So we've made it a voluntary
21 choice for each individual as to whether they would want
22 to participate in this or not.
23 MR. JEFFRIES: Well, you must have some idea,
24 or else you wouldn't have proposed the proposal to us,
25 that there was a large number of -- of groups that were

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1 interested in this concept, or else, you wouldn't be
2 pursuing this.
3 MS. TAYLOR-SILVA: Well, absolutely. And we've
4 formed a group called Farmers for Water Quality that
5 includes a number of different organization; Farm
6 Bureaus, commission -- Strawberry Commission, Western
7 Growers, our grower-ship organization, grower-ship
8 organization in San Luis and Santa Barbara Counties.
9 So all of us together have come together to
10 look at the coalition framework. And work with Tess on
11 these elements that have been presented to you today.
12 And so, in that regard, you have a large group
13 of people representing the growing community, and members
14 of the growing community, who have come together to make
15 this presentation, too.
16 MR. JEFFRIES: Yeah. I -- I wish you would
17 have proposed this back in July of last year and then had
18 some kind of chart that -- flowchart to show us how this
19 would actually work and the responsible parties.
20 CHAIR YOUNG: Well, it -- this can be part of a
21 recommendation --
22 MR. JEFFRIES: Well, I --
23 CHAIR YOUNG: -- to staff --
24 MR. JEFFRIES: -- understand --
25 CHAIR YOUNG: -- to take their Attachment B and

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1 look at. So...
2 MR. JEFFRIES: Well, but I -- I think it would
3 have simplified the process we're going through right
4 today, if we'd have had some of that prior to.
5 I mean, that's hindsight. That's
6 Monday-morning quarterbacking. I understand that. But
7 it's not too late.
8 And if, you know, the rest of us are going to
9 -- I would personally like to look at it further. I
10 think it's an interesting concept.
11 MS. DUNHAM: We have the documents that we can
12 provide to you.
13 CHAIR YOUNG: Well --
14 MS. DUNHAM: I'll let that --
15 CHAIR YOUNG: -- we're -- we're gonna need to
16 discuss all these things --
17 MR. JEFFRIES: Absolutely, Mr. Chairman. I --
18 CHAIR YOUNG: -- as to what -- Mr. Thomas.
19 MR. THOMAS: I have a question for --
20 CHAIR YOUNG: Oh, okay.
21 MR. THOMAS: -- the group. If that's okay.
22 MR. JEFFRIES: But, let me one -- one of -- I
23 have two, one for the staff and one back to the farm.
24 Michael, didn't you say that you weren't going
25 to require drilling wells for groundwater monitoring?

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1 MR. THOMAS: Correct. The order --
2 MR. JEFFRIES: Okay.
3 MR. THOMAS: -- proposed order does not require
4 that.
5 MR. JEFFRIES: So the groundwater monitoring
6 wouldn't require any additional cost, other than the
7 testing.
8 Now, are you contemplating on doing surface
9 monitoring, surfacewater monitoring?
10 MS. DUNHAM: The -- the end -- the surfacewater
11 monitoring would basically remain as it currently is,
12 which would be the cooperative monitoring program.
13 That would -- that does not go away, and that would
14 remain.
15 MR. JEFFRIES: Okay.
16 MS. DUNHAM: There would no -- there would be
17 no individual discharge monitoring, like there is now
18 being proposed for Tier 3 participants.
19 MR. JEFFRIES: Well, I -- I'm also interested
20 in the groundwater monitoring part, as well. So think
21 about that. And we'll just go further.
22 MR. BRIGGS: Mr. Thomas.
23 MR. THOMAS: Thanks.
24 So, Ms. Dunham, you mentioned requirements that
25 the coalition would be implementing on the grower.

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1 And have you done an economic analysis of those
2 requirements, how much it would cost.
3 MS. TAYLOR-SILVA: I can speak to that.
4 Yes. We are -- as -- in working with Dr.
5 Barbeau on the economic analysis of the staff proposal,
6 we will also be doing an analysis of this group --
7 third-party group.
8 MR. THOMAS: But you haven't done that economic
9 analysis yet?
10 MS. TAYLOR-SILVA: It is in process. But it
11 has not been done. It is not complete.
12 MR. THOMAS: Okay.
13 And you mentioned that groundwater sampling is
14 voluntary under your approach?
15 MS. DUNHAM: As in our original proposal, we
16 would -- we would not require that the groundwater
17 monitoring component that you have in your draft order be
18 required.
19 MR. THOMAS: Okay. So you also said -- if I
20 heard you correctly -- that this approach would allow you
21 to follow up on groundwater problems.
22 MS. DUNHAM: Absolutely.
23 MR. THOMAS: How would you know there were
24 groundwater problems if you're not doing the sampling?
25 MS. DUNHAM: Well, first of all, we would be

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1 looking at it based upon people's monitoring practices.
2 And as -- as been exposed previously, there are lots of
3 information data, GAMA data, et cetera, to identify areas
4 where there are impairments.
5 And we would be able to help those in using the
6 nitrate hazard index that Dr. Letey has put forward to
7 determine the risk to groundwater for their area, to know
8 who is in the most vulnerable areas for groundwater, and
9 the need to work with making sure they are implementing
10 appropriate management practices to be protective.
11 MR. THOMAS: Okay.
12 CHAIR YOUNG: Okay.
13 MS. MC CANN: I just wanted to get
14 clarification. I spoke earlier about the Farm Bureau
15 proposal that was submitted on December 3rd.
16 And I think I shared, very clearly, that the
17 milestones did not include any -- any indicators of
18 effectiveness of management practices of individual farms
19 to show control of discharges or pollution reduction.
20 And from the proposal -- from the presentation
21 I just heard
22 (Reporter clarification)
23 CHAIR YOUNG: Slow down.
24 MS. MC CANN: I'll start over.
25 I just wanted to clarify that I didn't --

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1 CHAIR YOUNG: Slow down.
2 MS. MC CANN: -- that this presentation sounds
3 like it has the same milestones as the December 3rd
4 submitted alternative that we evaluated, and that
5 earlier, in my presentation comments, I demonstrated that
6 relative to the draft order, does not have any indicators
7 of effectiveness of management practices or pollution
8 control reduction from individual farms included, and
9 none of that to be reported to the regional board.
10 Could you explain that.
11 MS. DUNHAM: I guess I could say, other than
12 having every individual actually having their operations
13 audited to determine what they are actually implementing
14 and if they are implementing appropriate and effective
15 management practices in conjunction with professionals, I
16 would consider that a fairly large milestone to make sure
17 that people are actually implementing management
18 practices.
19 So that would be a -- a major part of the
20 program here. As compared to any, you know, milestone
21 that has been discussed in other orders.
22 MR. THOMAS: The difference being our
23 milestones are water quality based. The -- the
24 difference being our -- our milestones are water quality
25 based, largely.

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1 And in your proposal, they are not. They are
2 implementation management -- implementation of management
3 practices. And as your slide here says, for instance,
4 you provide names of participants in good standing.
5 So one of the comments we would get if this was
6 our proposal is: What does "good standing" mean? And
7 number of operations audited in a 12-month period.
8 Audited for what?
9 Those are the kind of questions we would get.
10 MS. DUNHAM: Well --
11 MR. THOMAS: And what we have to tie it back
12 to, is water quality standards and meeting water quality
13 standards, not implementing practices.
14 CHAIR YOUNG: You know, I'd like to just draw
15 this portion of the proceeding to a close because we have
16 so many others to get to.
17 It's important. I -- I think, at least, for --
18 from my perspective, I think, we're going to ask them to
19 submit their attachment to you so that we can have you
20 look at it.
21 And we're going to have more opportunity to
22 discuss it, when we continue this meeting. Because we're
23 not going to finish it today. There's no question about
24 that.
25 I just want to get through with as many

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1 presentations as we can today.
2 So, thank you. The Strawberry Commission is
3 up.
4 And, how is our reporter doing?
5 (Off the record)
6 CHAIR YOUNG: Okay. Go ahead. If you're
7 ready, go ahead.
8 Okay. Folks.
9 MR. TOMLINSON: Okay. Chairman Young --
10 CHAIR YOUNG: Yes.
11 MR. TOMLINSON: - Vice Chairman Jeffries,
12 Member Hodgin, Dr. Hunter, for the -- my name is Rick
13 Tomlinson with the California Strawberry Commission. I
14 have Dr. Michael Cahn with me today.
15 We wanted to address several specific issues
16 related to strawberries.
17 First, before I even begin, I want to make
18 clear, we strongly support the previous coalition effort
19 that was just described. We think there are so many
20 errors with the current staff proposal, that it is -- it
21 is not implementable.
22 And so I'm going to point out some errors in
23 the staff proposal that we would like specifically
24 addressed regarding strawberries; but, overall, we
25 believe that -- that the only workable resolution is that

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1 coalition approach that was previously described.
2 So the first part is just on Appendix F. The
3 staff did an economic analysis. I think you're all
4 familiar with the -- the profile of strawberries in
5 region three. Roughly half of all the nation's
6 strawberries come out of region three.
7 There's about 320 family farmers, with an
8 average farm size of 75 acres. Out of the whole area, we
9 only represent about 5 percent of irrigated acreage.
10 That's our 2011 acreage.
11 In Appendix F, the staff developed a case study
12 on strawberries. We were the only commodity that they
13 did that with.
14 We went to verify that case study, and the
15 first thing that we identified was that the source data
16 that was cited doesn't exist. There is no 2010 document.
17 There's a 1999 document.
18 Dr. Bardeaux (sic) also identified that there
19 -- the -- the information that does come up on the web
20 site that you click was not understood well and misused.
21 We had Dr. Richard Green, a professor at U.C.
22 Davis further evaluate it. I have a -- a letter from him
23 I can submit so I don't have to take the time to read it.
24 I have some excerpts here in the presentation.
25 But I think the header on the top there in the

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1 staff analysis says that strawberries are inelastic, that
2 consumers will attempt to buy it no matter the price.
3 I have 320 farmers that would love that to be
4 the truth. We all know that's not the truth.
5 Another part of the strawberry profile, I
6 mentioned we're 5 percent of the irrigated acreage. And
7 the staff really focused on chlorpyrifos and diazinon -
8 we're about 1 percent of the combined use of chlorpyrifos
9 and diazinon in the entire area.
10 But, to trace back, the -- the previous staff
11 proposals, if you'll recall, the one that came out in May
12 2010, that proposal would have eliminated all strawberry
13 production because it included a standard that we
14 couldn't achieve.
15 It's since become something that is, I'll say
16 within the range of possibility; but, again, still many
17 problems.
18 Relative to the groundwater and nitrate, I'd
19 like to turn it over to Dr. Cahn to describe some of his
20 recent work.
21 DR. CAHN: Good afternoon, Chairman and the
22 board.
23 My name's Michael Cahn. I'm a irrigation water
24 resources advisor for the Central Coast. I'm with the
25 U.C. Cooperative Extension, work with many of the growers

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1 in the room here.
2 Because of a lack of -- of information on
3 current practices on -- on management of nitrogen and
4 water in strawberries, for the modern varieties that are
5 now grown on the Central Coast, Tim Hartz -- who's with
6 U.C. Davis -- and myself, worked collaboratively with the
7 regional board; we received a grant from the board - to
8 evaluate current practices.
9 And one of the first aspects or objectives of
10 this project was to evaluate how much nitrogen is
11 actually uptaken by the modern varieties that are grown
12 in the Watsonville, Salinas and Santa Maria area.
13 Through a number of fields, we -- commercial
14 fields -- we followed the -- the crop uptake through
15 monthly whole-plant samples. And these samples were
16 divided in vegetative material, as well as fruit
17 material, to determine the nitrogen content.
18 This data here shows, for the fields that we
19 monitored in Santa Maria and in Watsonville, this linear
20 uptake of nitrogen sort of peaking out at about 100
21 pounds of nitrogen per acre when we get to the end of the
22 production season.
23 We also evaluated the amount of nitrogen that's
24 uptaken by the fruit, exported through the fruit, and
25 that amounts to about 92 pounds of nitrogen per acre.

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1 In total, we reach about 200 pounds of nitrogen
2 per acre through the season, through the production
3 season.
4 Then we surveyed commercial growers. We had 28
5 in total, about their nitrogen fertilizer use records.
6 And this graph just shows the -- the variation in
7 nitrogen inputs by different growers.
8 On average they put in -- they used a total of
9 192 pounds of nitrogen per acre for the whole season.
10 This is roughly in balance with the uptake pattern of
11 strawberries.
12 So the nitrogen that's actually put on the
13 field is being taken up in the production.
14 If we look at the soil nitrate levels through
15 the season in some of these fields, we see, once we get
16 into the main part of the production season, April
17 through August, the soil nitrate levels are quite low.
18 And this is just more evidence that what's
19 being put on the field, in terms of fertilizer, is quite
20 in balance with what's being taken up by the crop.
21 Another question is: The vehicle for moving
22 this nitrate down into the aquifer is -- is water; right?
23 Through percolation. So we wanted to know, how much
24 water a grower is applying to strawberry fields.
25 We worked with the industry to put flow meters
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1 on roughly 34 commercial fields. And 17 of those fields
2 we more intensively monitored with data loggers and
3 evaluated the crop water use, through ET estimates. And
4 you can see the data logger right there, in the middle of
5 the field.
6 This is a summary of the data for these 34
7 fields. Roughly a average of 21 inches are used. We see
8 quite a range in water use. But we can put that terms --
9 in terms of crop ET, to look at what the water
10 requirements were of the strawberry crop.
11 When we put it in terms of crop ET, for the 17
12 more-intensively monitored fields, we see, on average,
13 growers are applying 93 percent of crop ET; in other
14 words, there are actually under irrigating a little bit.
15 Only a small minority are -- are -- are
16 applying more than 120 percent of crop ET. So, again,
17 the amount of water that's being applied --
18 Do you have a question?
19 DR. HUNTER: Yeah. Just quickly. ET.
20 DR. CAHN: Oh. Crop ET is evapotranspiration
21 or the water use requirement of the crop. Okay?
22 So roughly what's being applied is what's being
23 used, in terms of water. So that would also suggest that
24 very little drainage that's happening below the root zone
25 of the strawberry fields that we evaluated.
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1 But, just in summary, what we've learned so far
2 -- and there's a report also available that we submitted
3 to the board and to the staff -- the nitrogen uptake of
4 strawberries, the applied fertilizer and the uptake are
5 -- are in balance in the majority of the fields that we
6 looked at.
7 The average soil nitrate levels were below 10
8 parts per million nitrate. And many of the fields
9 actually were below 5 parts per million; suggesting,
10 again, the -- the crop is doing a good job of scavenging
11 most of the nitrogen that growers are applying.
12 Applied water volumes are in check with the
13 water use of -- of the crop.
14 And so, as a whole, if you take these results,
15 they do indicate in their preliminary study that
16 currently how growers are managing the fields has pretty
17 minimal risk to -- to nitrate loading to groundwater.
18 DR. HUNTER: And so what -- was -- was there
19 any part of your study that looked at the post-harvest
20 period? And I don't -- if you could define what that is,
21 how long a period it is.
22 And is that -- does that occur during the rainy
23 season? And are there factors there that we need to know
24 more about?
25 DR. CAHN: After harvest, that field's going to
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1 be rotated to another crop of either - strawberries, or
2 it will go back to vegetables.
3 It goes to strawberries -- you -- as you end
4 that crop, it has very low nitrate levels in the soil, so
5 there is low risk when the rainfall comes to leach what's
6 in the soil.
7 DR. HUNTER: And -- and so is there any --
8 there's no -- what's the longest fallow period for a
9 strawberry field?
10 DR. CAHN: The longest fallow period?
11 DR. HUNTER: Yeah.
12 DR. CAHN: They -- they would, typically,
13 probably plant the next -- put a cover crop in.
14 DR. HUNTER: Hm-hmm.
15 DR. CAHN: If they're going to go strawberries,
16 strawberries.
17 DR. HUNTER: Hm-hmm.
18 DR. CAHN: And then, probably in June or July,
19 at least in this area, start setting up that field for
20 planting again.
21 In many cases, they're rotating with vegetable
22 crops. So it might go right into vegetables in as early
23 as, you know, March or April.
24 DR. HUNTER: Hm-hmm.
25 DR. CAHN: Or it could be a little bit earlier.
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1 But that soil would come with low nitrate
2 levels.
3 DR. HUNTER: Hm-hmm. Okay. Okay. Thank you.
4 CHAIR YOUNG: Mr. Jeffries.
5 MR. JEFFRIES: Yes. Am I understanding that
6 you're saying that there is no nitrates or nitrogen going
7 below the root zone with strawberries?
8 DR. CAHN: We're not saying there's nothing
9 going down. We're saying these are indicators based on
10 the criteria you -- the staff was talking about before,
11 that strawberry growers are already meeting.
12 Okay. The -- the -- the 1.2 balance, the
13 majority of the growers are meeting that balance. That's
14 all we're -- we're saying. There -- there could be some
15 loss of -- of nitrogen, because there is nitrate in that
16 soil.
17 MR. JEFFRIES: Right.
18 DR. CAHN: And we monitored for the whole
19 season. I'm giving you numbers that are the average for
20 the whole season. There can be individual irrigation
21 events. You might lose a little water.
22 But the indication here is that the current
23 practices growers are using in strawberries is fairly
24 well in check with what we understand of best management
25 practices.

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1 And, in fact, if you're asking growers to
2 reduce their water use or their nitrogen use from where
3 they are now, in my opinion, they wouldn't be able to do
4 that without reducing yields.
5 MR. JEFFRIES: Okay.
6 DR. CAHN: They're already using very good
7 practices, is what --
8 MR. JEFFRIES: The -- the water use you showed
9 21 inches plus.
10 DR. CAHN: What's that?
11 MR. JEFFRIES: Your water use was 21 or 22
12 inches per year; is that correct? On the average.
13 DR. CAHN: That's right.
14 MR. JEFFRIES: And that was from January
15 through October?
16 DR. CAHN: That's correct.
17 MR. JEFFRIES: Is that including rainfall or is
18 that pumped?
19 DR. CAHN: That's pumped water.
20 MR. JEFFRIES: And you don't include the
21 rainwater?
22 DR. CAHN: No. That's just applied water. The
23 rainfall occurred roughly from January to March last
24 year. That was when 90 percent of the rainfall occurred.
25 Growers didn't irrigate significantly until

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1 about April.
2 MR. JEFFRIES: And rotation of strawberry crops
3 is what, usually three to five years? Depends the type
4 of plant.
5 DR. CAHN: Meaning how often --
6 MR. JEFFRIES: Yes. How often do they
7 rotate --
8 DR. CAHN: I'll let the Strawberry Commission
9 answer that question.
10 MR. TOMLINSON: It's going to vary
11 dramatically, depending upon --
12 MR. JEFFRIES: By the type of plant.
13 MR. TOMLINSON: If you're the owner and you're
14 just growing strawberries and doing a cover crop, and
15 just coming back in -- in eight months, or if you're
16 going immediately into vegetables, and then coming back
17 to that ground in a couple years.
18 MR. JEFFRIES: Well, are you indicating that
19 you transplant strawberry plants every year?
20 MR. TOMLINSON: Absolutely.
21 MR. JEFFRIES: So there's --
22 MR. TOMLINSON: We -- we plant every year. And
23 it's a roughly 14-month cycle.
24 So there's no immediate back-to-back. You have
25 to constantly be rotating with something else, whether

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1 that be a cover crop or whether that be with vegetables.
2 And so, we're in constant rotation with
3 vegetables.
4 MR. JEFFRIES: Okay.
5 MR. TOMLINSON: And -- and just to add; right.
6 This is an example of what Dr. Letey was talking about.
7 And why we wanted to address this as -- as I called it --
8 an error in the report; where the staff did not do a -- a
9 comprehensive nitrate evaluation to identify risk.
10 So what you see in the staff report is that
11 strawberries are designated as high risk for leaching
12 nitrate to groundwater.
13 And, when, in fact, the -- the evidence here is
14 we're making it no worse. Right? This is just the first
15 year of a study. We need more work.
16 But, certainly, to characterize us as high risk
17 would not be fair.
18 MR. JEFFRIES: Let me get this straight, Mr.
19 Tomlinson.
20 And you're telling me that you rotate
21 strawberry plants every 14 months, and then those plants
22 are disked up and there's a cover crop or there's another
23 type of crop that's put in for another season, and then
24 you come back and transplant the strawberry crop back in
25 again.

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1 MR. TOMLINSON: Yes.
2 MR. JEFFRIES: Is that what you're telling me?
3 MR. TOMLINSON: Yes. There's roughly --
4 depending upon where you're at in Santa Maria or in -- in
5 the Watsonville/Salinas area, anywhere from, say, 21 to
6 24,000 plants per acre to maybe up to 30,000 plants in
7 one acre that are planted each year.
8 And in -- and in each growing region, it's at
9 different times because they're trying to hit different
10 market windows, and go with the climate.
11 And so, yes.
12 MR. JEFFRIES: Okay.
13 MR. TOMLINSON: All right? But a big -- but
14 part of that, the reason why that works is -- right? --
15 it's not a magic crop. We're not -- we're not the only
16 crop that can somehow absorb 100 percent of the
17 fertilizer that's applied. Right?
18 It's because we're in this constant rotation
19 system. It's because maybe there might be some -- some
20 nitrogen, in terms of the water that's coming up. There
21 might be some in the residual.
22 When you asked questions of Danny Merkle about
23 what does a good farmer do, this is an example. They
24 look at what's already there. They don't apply more than
25 what they need. They don't make it any worse than what
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1 they got it. Right?
2 This is an example of what I would characterize
3 as low risk to groundwater. Certainly, I would ask you
4 to make -- to make the changes to the order that would
5 say we're not high risk.
6 MR. JEFFRIES: Well, listening to Dr. Letey --
7 Letey -- is it Letey?
8 UNIDENTIFIED SPEAKER: Yeah. L-E-T-E-Y.
9 MR. JEFFRIES: I was going to ask him the
10 question, because he talked about nitrogen or nitrates
11 getting down past the root zone.
12 Would that mean to a farmer that he should
13 subsoil every year and bring that up, turn the ground
14 over?
15 MR. TOMLINSON: And -- and that's what he was
16 -- part of his answer - right? - is that each crop is
17 going to have a different set of practices to try and
18 reduce risk for groundwater because we all need to -- to
19 achieve those goals. But it's all going to look
20 different for each commodity.
21 For here, for strawberries, we have a drip
22 irrigation system that's highly efficient.
23 MR. JEFFRIES: That's obvious.
24 Thank you.
25 CHAIR YOUNG: Mr. Hodgin.
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1 MR. HODGIN: Dr. Cahn, your statement here
2 suggests that strawberries really are not a major
3 contribution to groundwater pollution.
4 But -- do you have any figures on the same
5 fields of -- to know what the level of contamination is
6 in the groundwater?
7 DR. CAHN: Did we evaluate the nitrate level
8 of --
9 MR. HODGIN: Did you evaluate that -- where --
10 where I'm going is -- is that an area that's -- in -- the
11 local strawberry fields, is that contaminated groundwater
12 under there, which may or may not have anything to do
13 with the strawberry production?
14 DR. CAHN: We did evaluate the irrigation water
15 for nitrate levels. I can't recollect exactly the
16 levels. But none of them were very high.
17 I -- I mean, they were meeting the water
18 quality standards -- the drinking water standards of 10
19 parts per million, you know, in these fields.
20 MR. HODGIN: So you were testing the water
21 that's being used to irrigate the fields?
22 DR. CAHN: That's right. So I don't know if
23 there were other wells around that are shallower. They
24 might have higher nitrate. I have no idea.
25 MR. HODGIN: Thank you.
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1 MR. TOMLINSON: Member Hodgin, your question is
2 a excellent question. Because it's an example of why I
3 say, even strawberries here, with the low risk that we're
4 describing to you, how challenging it would be for us to
5 comply.
6 Because the vast majority -- 70, 80 percent of
7 strawberry farmers -- are leasing their ground. They're
8 constantly moving.
9 And so, in any given year, they might be on a
10 farm where the groundwater below has nitrate in it from
11 production practices 20 or 30 or 40 years ago, that have
12 no correlation to them or maybe even the crop before it
13 or what was going on.
14 So trying to tie that correlation to
15 groundwater and then what's going on on top, it doesn't
16 -- there isn't that immediate correlation. That's why a
17 whole-systems approach is more effective than an
18 individual farm measuring groundwater and somehow
19 suggesting that -- that there's a correlation between
20 that farm and that groundwater.
21 CHAIR YOUNG: If -- if I'm not mistaken, I
22 thought staff put up a -- a slide that showed that the
23 nitrate levels in groundwater in this area were
24 increasing year by year.
25 MR. TOMLINSON: I think if you look at the GAMA
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1 database, what you'll find is that varies dramatically
2 well by well. And it's shifting.
3 I think the -- you had testimony at your
4 previous workshop that suggested that it was shifting.
5 And, certainly, in some wells it's increasing in some
6 areas. In some areas it may be decreasing, as well.
7 CHAIR YOUNG: Well, shifting in what way?
8 Well, I know shifting means moving. But I mean
9 going up and down. Okay.
10 So how -- what about if you're looking at the
11 groundwater basin, and you averaged all these wells so
12 you were taking into consideration the ups and the downs?
13 MR. TOMLINSON: I think that would've been an
14 excellent analysis for the staff to do. But, instead,
15 what they presented to you was the highest level of
16 detection ever in 25 years.
17 And so they presented you data that, in some
18 cases, was decades old. So you're left with the
19 impression that all of these wells are above drinking
20 water standard.
21 When, in fact, you go to the GAMA database
22 today, and it'll show that the vast majority are not.
23 And if you go to those USGS studies, that were done just
24 a few years ago, it'll show that -- that the vast
25 majority of wells are in compliance.

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1 That, yes, there is nitrate in groundwater;
2 yes, it needs to be addressed; yes, we need to work on
3 it. But it's not the picture that you've been presented.
4 CHAIR YOUNG: Well, are there nitrate levels
5 that are exceeding drinking water standards?
6 MR. TOMLINSON: I'm sure there are. And some
7 of it, I'm -- I would estimate -- I -- I'm not a
8 groundwater hydrologist. But I would estimate that
9 agriculture has contributed at some point. Maybe
10 currently.
11 There are many other sources, as well.
12 CHAIR YOUNG: Let me -- I just want to ask
13 staff:
14 What's with the GAMA data? I mean, we're
15 hearing people claim that staff has kind of picked and
16 choosed data, you know, ignored GAMA data.
17 I mean, can you guys clarify what we're
18 hearing.
19 MS. SCHROETER: I -- I can --
20 MR. HODGIN: Go ahead.
21 MS. SCHROETER: Let me try and answer that.
22 And maybe Matt can provide some additional clarification,
23 if necessary.
24 So the -- what -- what the GAMA data set is --
25 and there's -- there's several parts to GAMA. There is a

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1 groundwater basin public supply well study, which is
2 these deeper wells, which is these -- what we call mezo
3 (phonetic) maps showing you here on the screen.
4 There is special studies, which are focused on
5 contaminants, typically, like nitrate, like - which is
6 what the Lawrence Livermore studies are doing.
7 And then there's domestic well studies; for
8 example, those studies that detect a - high levels of
9 nitrates; for example, in Tulare County.
10 The groundwater public supply well analyses,
11 those are all deep public supply wells, typically from
12 older groundwater, and so it takes some amount of time,
13 because they're deeper wells, for contamination to reach
14 them.
15 What is missing from that data -- database, is
16 the shallow wells. And so we don't see the shallow well
17 impact; although, the special studies part of GAMA has
18 looked at shallow wells and has found that nitrate
19 impacts are happening in shallow groundwater within the
20 last two to ten years, so in the current timeframe.
21 In addition, what the GAMA data set is
22 challenged by is that as wells are abandoned -- because
23 they go out of service due to high levels of nitrate
24 contamination, for example -- they drop off the radar
25 screen.

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1 And what DPH presented to the state board last
2 month, is that those wells are no longer represented.
3 It's an artifact of the data set. It does not mean that
4 groundwater is getting cleaned up.
5 And, in fact, most of those wells -- if you
6 sampled on a -- a bore right next to where the well used
7 to be, is still high levels of nitrate.
8 Nitrate pollution doesn't assimilate very
9 quickly. And so that's the complicate -- some of the
10 complication of the data set.
11 MR. THOMAS: I would -- I would agree that the
12 situation is not exactly as we presented it. In the
13 sense that it's worse than we presented it.
14 It is worse than we presented it. Old wells
15 that are contaminated go out of production and they are
16 not sampled any longer, they are abandoned.
17 New wells come into play. And if you sample
18 those new wells, it's going to present a picture of
19 cleaner water than is actually there.
20 CHAIR YOUNG: Okay. I -- I think his name --
21 is it, Dolezal? Mr. Dolezal had presented two side-by-
22 side slides comparing the Santa Maria area.
23 Yours was on the left, his was on the right.
24 There was a marked difference in the number of blue dots,
25 if you want to just characterize it that way.

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1 What's the difference, from your perspective,
2 on the presentation of those two data sets? One suggests
3 that you didn't include a whole bunch of wells and,
4 therefore, the percentage of contaminated wells from his
5 presentation should be much lower than what you
6 presented.

7 MS. SCHROETER: We -- we would have to look at
8 the data sets side by side. I -- you know, the slide's
9 no longer here in front of me. And I'd have to look at
10 it in greater detail.

11 However, it would depend upon which wells were
12 being represented in each study, at which time period.
13 So in any given five-year timeframe, there's whole
14 different set of wells that come into play.

15 CHAIR YOUNG: Well, he had the same timeframes,
16 from what I remember; at least, it was a number of years
17 compared identically, if I'm not mistaken.

18 MS. SCHROETER: I think what's important here
19 to remember, is that the fact that there's a nitrate
20 groundwater pollution problem is not being debated.

21 We can talk about the level of pollution that
22 there is. But I can show you several slides from
23 presentations and technical service providers, just
24 recently, which are all conveying the same thing about
25 the nitrate groundwater pollution problem.

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1 What we don't have great data about, is the
2 shallow groundwater pollution that's going on, which
3 would be representative of current practices. And the
4 data that we do have also shows a problem.

5 I am interested in the Strawberry Commission's
6 data, and taking a closer look at that. And what I'm
7 also interested in understanding is:

8 For those growers who do not meet the nitrate
9 balance ratio of 1.2, for example, what amount of nitrate
10 loading is coming from those -- those fields?

11 DR. CAHN: There was a very small minority that
12 were above that 1.2, I believe maybe 5 out of the 34
13 fields. So it's a small, small number. I think it came
14 out to about 12 percent.

15 MR. TOMLINSON: And I think previous reports
16 that the staff has cited would suggest that about half of
17 nitrate that might go below the root zone gets -- goes
18 through a denitrification process naturally.

19 And so, the amount that then leaches to the
20 groundwater is going to be a function of the amount of
21 surfacewater applied. So it would be a combination of a
22 grower, one, having excess fertilizer, and then, two,
23 overwatering.

24 If those two things didn't happen, if you just
25 had the excess fertilizer, then it would be the rate that

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1 -- of natural rainfall or the rate of flow from a
2 subsequent crop.

3 And then you'd have a certain amount -- I think
4 the studies that the -- the staff have cited, about half,
5 that gets through a natural denitrification process.

6 CHAIR YOUNG: Okay. You -- you guys still have
7 six minutes.

8 MR. TOMLINSON: And -- yes. If I could just
9 add one more thing. Because you asked

10 CHAIR YOUNG: You have six minutes, so --

11 MR. TOMLINSON: Okay.

12 CHAIR YOUNG: -- ahead and --

13 MR. TOMLINSON: Well, the -- okay, I will.
14 Thank you.

15 One of the questions that you had asked
16 previously was about the Dolezal report. I was concerned
17 that if we were going to present that information to you
18 today, that we triple-checked it.

19 We hired a groundwater hydrology firm to peer
20 review Mr. Dolezal's work, his memo. And I'll read a
21 quick sentence:

22 We agree with the conclusion of the Dolezal
23 report that the presentation -- the staff presentation --
24 distorts the facts related to the source, degree and
25 extent of nitrate contamination in groundwater. And that

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1 additional unbiased analysis is needed to support policy
2 decision and development of best management practices for
3 nitrate sources to groundwater.

4 I'll offer that, as well, to you.

5 If I could return to the presentation.

6 So in regards to nitrate, we would ask that you
7 please correct the order, if you move forward with this
8 version or any other version, regarding the designation
9 of strawberries as high risk for loading to groundwater
10 for nitrates.

11 Also, I wanted to talk briefly about the
12 tiering criteria. And this would be a typical strawberry
13 farmer.

14 So if -- if you consider the square box a
15 strawberry farm and the blue line on the bottom a river
16 - let's say that's the Parajo River, let's say the left
17 is some tributary, let's say the right is the Lower
18 Parajo with a levee on it - that -- that would be a
19 typical strawberry farmer who would be in Tier 1.

20 If you happen to have that same strawberry
21 farmer -- whether he had an organic field or a
22 conventional field -- that, again, was not applying
23 chlorpyrifos or diazinon, who was 500 feet away from that
24 river -- maybe even a river that's got a levee on it, or
25 maybe, instead of 25-foot buffer or 30 or 50-foot buffer,

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1 they decided to put a berm or a ditch or a retention pond
2 - it wouldn't matter - that farmer would be Tier 2.
3 Same farm.
4 If that farmer happened to be in a co-op, and
5 that co-op had other farmers that were over a thousand
6 acres, they would now be in Tier 3, even if they were
7 2,000 feet away from the river; same farm, no
8 chlorpyrifos, no diazinon.
9 This is an example of the arbitrary nature of
10 the currently proposed tiering criteria, where the
11 overwhelming focus on toxicity, the evidence that's
12 currently been accumulated over the last five to six
13 years, is that chlorpyrifos and diazinon are the -- the
14 two pesticides that are the primary source of -- of
15 toxicity.
16 What the others are, what the detection versus
17 toxicity, I don't know. But, clearly, the staff has
18 identified that these two have.
19 But when you look at how the criteria applies
20 to a farmer that doesn't use them, you could have the
21 same farmer be a Tier 1, 2 or 3. And -- and that just
22 doesn't make sense to us.
23 That's an example of why I was saying, at the
24 beginning, Dr. Hunter, about why this is just so
25 problematic for us.

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1 You could then have another strawberry farmer
2 -- because I -- remember, I mentioned we represent about
3 1 percent. There are some farms -- some farms about 6
4 percent, Mr. Jeffries.
5 You asked about crops going back to back.
6 About 6 percent of the strawberry crops stay in the
7 ground for two years. Those folks have a higher pest
8 pressure. They might resort to something like
9 chlorpyrifos and diazinon to deal with that. That would
10 be a very important product for them to be able to use.
11 They might be 3,000 feet away from the river.
12 They'd be in Tier 2.
13 So if you were to stick with the current staff
14 order, the one thing that you might do is delete the
15 definition of operation. And everywhere it appears in
16 the order, just simply replace it with landowner or farm.
17 And that eliminates all those Tier 3 people
18 who, you know, would otherwise be just fine, having no
19 risk but somehow being captured in this def -- this
20 definition of operation.
21 Another thing that you might do is, if you look
22 at your tiering criteria for 1A and 1B, about not using
23 chlorpyrifos and diazinon. If you're not using it, if
24 those are the primary source of toxicity, then what does
25 it really matter whether that farm not using is 500 feet

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1 away or a thousand feet away?
2 Again, there's other tools they can use besides
3 buffers to -- to come into compliance.
4 Also, a lot of the sediment management
5 requirements are all in Tier 1. So there's not some big
6 dramatic difference there between Tier 2 and Tier 1 in
7 terms of sediment management.
8 So if you remove the 1,000 foot from -- from
9 Tier -- from Tier 1, that would allow some of those folks
10 from Tier 2 to move back down into Tier 1.
11 The last thing you might do is look at Tier 2,
12 A and B, and then look at Tier 3. If you just simply
13 removed the Tier 3 language for surfacewater down to Tier
14 2, that's what your -- what the staff is identifying as
15 something that they're trying to address, which is,
16 they're trying to address an immediate discharger,
17 someone who's immediately discharging water with
18 chlorpyrifos and diazinon into a waterbody.
19 Again, our -- we would suggest that the overall
20 coalition approach is much better. I'm just saying, if
21 you're going to move forward with the order that's been
22 presented to you, these are the type of changes that need
23 to occur.
24 CHAIR YOUNG: And do -- do the other farms that
25 are not using these two chemicals - are they using

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1 another pesticide in that list?
2 MR. TOMLINSON: I'm sure -- I'm sure some of
3 them are. I'm sure some of them are.
4 But the -- the data, again, is not conclusive
5 on what is -- is it a detection? Is it toxicity? But
6 these are the examples why a coalition -- when we would
7 look at an audit for a coalition approach, we would be
8 looking at all of the pesticides.
9 We wouldn't just be looking at chlorpyrifos and
10 diazinon.
11 CHAIR YOUNG: Okay. All right.
12 You've got about another minute and 15 seconds.
13 MR. TOMLINSON: All right.
14 This is a summary of the changes that I've
15 described.
16 CHAIR YOUNG: Yeah.
17 MR. TOMLINSON: First tool regarding Attachment
18 A, Page 13, Paragraph 51, and Attachment A, Page 48,
19 Paragraph 10, regarding the -- the nitrate component.
20 The other two are in regards to the
21 surfacewater, the changes to the tiering criteria.
22 The last one, which is Page 13, Paragraph 12,
23 this is a brand-new paragraph that just emerged two weeks
24 ago that would give the executive officer authority to --
25 to completely change the tiers at any time, over the next

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1 five years.
2 We can't live with that type of
3 unpredictability. Whether it's adding the next 10, the
4 next 73, adding five more tiers, collapsing two tiers or
5 whatever, that type of unpredictability is -- is just --
6 we can't live with that.
7 And so, we would ask that you strike that
8 paragraph, too.
9 Lastly, I would just say, relative to the
10 coalition approach, if you think about what was described
11 to you in terms of audits, I would -- I would suggest
12 that you look at the other clause that referenced the
13 sustainability program because it is very, very similar.
14 So if it's good enough for a wine grape grower
15 to move from Tier 3 to Tier 1 or Tier 2 to Tier 1, why
16 isn't good enough for any of the other commodities?
17 CHAIR YOUNG: Are there other commodities that
18 have developed sustainability certifications?
19 MR. TOMLINSON: There are -- we are -- there
20 are many other commodities working on those right now.
21 There's a -- a sustainability stewardship index.
22 And, in addition to that, though, if you just
23 simply look at the -- the practices that are required,
24 the coalition approach is very similar to what that
25 sustainability program looks like.

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1 In fact, there's no groundwater monitoring in
2 the sustainability program. And the staff recommended
3 that as a vehicle for a wine grape grower to move from
4 Tier 3 or Tier 2 into Tier 1.
5 So, again, if you -- if you just simply look at
6 that, you'll find that what we've proposed to you is what
7 the staff has said is acceptable in other situations.
8 CHAIR YOUNG: Thank you.
9 Frances, did you have a question or comment?
10 MS. McCHESNEY: I just have a request that --
11 and maybe it's already happened -- that you leave your
12 Power Point presentation with the staff.
13 And, Tess, the same with yours -- your Power
14 Point presentation is --
15 Okay. We just need it -- need it for the
16 record.
17 MR. TOMLINSON: Okay. And did you want me to
18 leave these three letters?
19 MS. McCHESNEY: You can give them to Michael.
20 MR. TOMLINSON: Okay.
21 CHAIR YOUNG: Yeah. Okay.
22 Thank you for your presentation.
23 Coastkeeper is next.
24 We've given 24 minutes to you.
25 Want your break, Ms. Reporter? Let's take a

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1 ten-minute break.
2 (Recess taken)
3 CHAIR YOUNG: Okay. Coastkeeper is up.
4 Folks, please take your seats. If you want to
5 continue talking, you can do so outside.
6 No -- no more cards. Okay. Well -- water
7 standard for groundwater...
8 Is it -- is it in Spanish? The NOI.
9 Okay. Just, Steve, before you start, question
10 for Lisa and staff. I think this is a good question
11 someone just submitted on a card here.
12 Is the NOI form and the annual form -- any
13 reporting forms -- are they also available in Spanish?
14 MS. SCHROETER: That is a great question.
15 The NOI form -- the annual compliance form is
16 not yet developed.
17 CHAIR YOUNG: Right. I --
18 MS. SCHROETER: It's included as part of --
19 CHAIR YOUNG: How about the --
20 MS. SCHROETER: -- the order.
21 CHAIR YOUNG: -- NOI?
22 MS. SCHROETER: The NOI is complete. Fourteen
23 hundred of the 1,700 operations have already submitted an
24 update via the electronic NOI.
25 The instructions are all in Spanish. We have

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1 provided assistance to Spanish growers in three different
2 opportunities, now. Also, they have come to our office.
3 The form, itself, on-line is not yet in
4 Spanish. But we plan to put it on-line in Spanish.
5 CHAIR YOUNG: It might be helpful. I mean, I
6 -- I think people should be responding in English. I
7 mean, submitting forms in English.
8 But I think that there should be maybe
9 something on the form, itself, that lets them know that
10 they can get explanatory information that's in Spanish.
11 And where that is.
12 MS. McCANN: On the transmittal form there is a
13 number that you call --
14 CHAIR YOUNG: Okay.
15 MS. McCANN: -- if you need Spanish assistance.
16 As well as the instruction form that's in Spanish.
17 CHAIR YOUNG: Okay. All right.
18 Mr. Shimek, 24 minutes.
19 MR. SHIMEK: Good afternoon everyone.
20 My name is Steve Shimek. And I'm here
21 representing a -- a kind of a collective group of
22 comments, although, some of these people will be offering
23 individual comments.
24 So I'm here representing Environmental Defense
25 Center, Environmental Justice Coalition for Water,

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<p>1 Monterey Coastkeeper, Santa Barbara Channelkeeper and 2 environments in the public interest. 3 First of all, just very quickly. Times have 4 changed. Things are no longer the way that they used to 5 be. But there used to be a lot of water in areas like 6 the Lower Salinas and some of these other watersheds. 7 The watersheds have changed a lot. 8 Some of the -- the way that the landscape 9 looked, it used to be able to -- it was much more 10 resilient. And, in some ways, what - with new 11 regulation what we're trying to do, is not go back in the 12 way-back machine. We can't do that. 13 But we are trying to restore some of the 14 function of our watersheds. There are also uses that no 15 longer exist on some of our rivers and streams. 16 And, again, the rivers and streams, they just 17 don't look the way they used to and they just don't 18 function the way that they used to. 19 This is Tembladero Slough. This is not the 20 Salinas River. But that's the condition that we have on 21 some of our waterways today. 22 You have lots of algae. You have rodent traps. 23 You have bare earth banks. You have farming very near 24 the waterway. 25 Just as a note, this is a dead sea otter. I Page 270</p>	<p>1 aquifer are above drinking water standard; 28 percent. 2 CHAIR YOUNG: Are the public wells or -- 3 MR. SHIMEK: So, it's not clear. And we could 4 not get clarity. They -- it is a mix -- I believe, it is 5 a mix -- so what the statement reads in the report is 6 that some are domestic wells, some are irrigation wells. 7 There is no breakout of what -- how many of 8 each. 9 We also know that we had a economist up 10 earlier. And he talked about the impact of nitrates to 11 -- and -- and resolving this problem to farmers. 12 Well, I want to make the point that there is 13 impact on people, as well. And this presents real costs. 14 This is a study that was literally just released. I have 15 copies of the executive summary that I can leave, I 16 guess, with Michael, is what I've heard. And for you to 17 have. 18 But, basically, it's talking about costs in the 19 millions and millions and millions of dollars. And this 20 isn't cleanup. This is to treat the water so that it is 21 in a drinkable situation. 22 When we set out on this process, the goals were 23 quite simple. The goals were to eliminate toxic 24 discharges of ag pesticides to surface and groundwaters, 25 reduce -- and I want to emphasize that word -- nutrients Page 272</p>
<p>1 kind of, as you know, I -- I represent environmental 2 interests to a great extent. And last year, 26 dead sea 3 otters washed ashore and they died of microcystis 4 poisoning. 5 Microcystis is a freshwater algae that becomes 6 toxic and blooms in high nitrate conditions, washes into 7 the ocean, is concentrated by mussels and bivalves, the 8 otters eat it and die. 9 So, in other words, the toxicity that we're 10 seeing in our -- and -- and high nitrates that we're 11 seeing in our freshwater is reaching into the ocean. 12 I'm about -- I think, in retrospect, I'm about 13 to add some -- to some of the confusion on wells and -- 14 and water. But this slide existed before I showed up 15 here today. 16 In the Salinas Valley, in Monterey County, as 17 some of you know, we have been trying to work 18 cooperatively -- although, it has not turned that way -- 19 with Monterey County Water Resources Agency, trying to 20 get their well water data. 21 The data that we have received is old data. 22 This data does exist by aquifer. So I do have that. I 23 don't have it on this slide. 24 But it's essen -- but essentially, 28 percent 25 of the wells in Monterey County in the -- in the Salinas Page 271</p>	<p>1 discharged to surfacewaters, reduce nutrient discharges 2 to groundwater, minimize sediment, protect aquatic 3 habitat. 4 Frankly, I believe, that these are goals that 5 can be embraced by everyone. These are the goals that 6 were set out in the letter that was sent out in 2008. 7 These are still the goals that we're trying to achieve 8 today. 9 There is sometimes a lot of rhetoric that talks 10 about the fact that we can't do this tomorrow. 11 No one's asking anyone to do this tomorrow. 12 That is pure rhetoric. 13 So if you look at no regulation versus total 14 regulation -- now, this is my opinion -- but the 2004 15 waiver was kind of a three, you know. 16 So then there was the February 2010 waiver, 17 which I think was somewhere right around a seven. Then 18 there was the November 2010 waiver, which I think was 19 right in the middle. And then there was the March 2011 20 waiver, which I think, again, was somewhere right in the 21 middle of regulation. 22 But, I think, this misses the point. This is 23 the slide that you saw earlier. And this is the elephant 24 in the -- in the room. 25 Where are you -- if -- if that 2011 draft Page 273</p>

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1 what are the goals. There is a fundamental difference
2 between how we are dealing with toxicity and how we are
3 dealing with those things that we want to reduce and
4 minimize.
5 We want to eliminate toxic discharges. I don't
6 know if "effectively control," when it's applied equally
7 to toxicity, groundwater, surfacewater, that makes it all
8 seem the same, where there were fundamental differences
9 in the goals, and we are supposedly eliminating toxic
10 discharges to surface and groundwaters.
11 So, the vocabulary change is:
12 On Tier 3, dischargers must effectively -- must
13 eliminate -- I'm sorry -- individual waste discharges of
14 pesticides and toxic substances to waters of the United
15 States.
16 "Effectively control," I don't know what the
17 means. I don't know that anyone knows what it means.
18 And you're applying it to nitrates and toxics. I don't
19 think they're equal, under the law. Not a lawyer.
20 Toxicity. Continuing along the line of
21 toxicity - this is going to get a little confusing, but
22 applies -- we are worried about this chlorpyrifos and
23 diazinon thing.
24 Let me make it clear that we prefer going back
25 to the February solution of including the entire list.

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1 We prefer that solution.
2 The problem with that solution, frankly, is
3 that it will throw a whole bunch of people into Tier 3.
4 It'll throw almost everybody into Tier 3.
5 And I'm not sure that -- that -- that Regional
6 Water Quality Control Board staff is prepared to handling
7 -- to handle all the growers being in Tier 3.
8 So that's the tiering structure. How do we
9 concentrate on some people?
10 But let's say this another way. How do we,
11 again, backstop this idea so that we eliminate toxicity?
12 How do we disincentivise (phonetic) switching to a toxic
13 pesticide?
14 And so here's our suggestion -
15 Now, the reason that this is confusing is,
16 remember, we had this proximity to contaminated well
17 being a new 3C. So, in order to keep everything on this
18 slide, I just kind of noted that.
19 But here's what we're saying:
20 After October 1st, any operation that
21 discharges to a waterbody impaired for toxicity and
22 continues to show water or sediment toxicity in the
23 previous two toxicity tests, immediately moves to Tier 3.
24 In other words, if your water continues to be
25 toxic after two and a half years -- and, remember, this

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1 also accomplishes that idea that we offered up, that you
2 liked a while back, that basically said, you know, if
3 they don't have to show their data - because, remember,
4 these guys are not doing individual monitoring. These
5 guys are in Tier 2.
6 But then what happens is that they don't
7 eliminate toxicity and they move to Tier 3. So this is a
8 way to backstop, again, them just switching to something
9 equally toxic.
10 Again, I'll reiterate that our group prefers
11 the February solution of the entire list. This is an
12 alternative to that.
13 Vegetated buffers and aquatic life. This is
14 kind of the way -- this is the way it reads now. This is
15 cut and pasted.
16 And, basically, it says, you know, that -- that
17 -- there's a couple paragraphs here. And it talks about
18 the basin plan. And it talks about how there's --
19 construction needs to have 30 feet.
20 Again, we don't really understand what making a
21 plan really does and what the requirement is.
22 And -- and we also have to keep in mind where
23 we have moved from. The environmental folks came into
24 this room saying that aquatic life was one of our core
25 concerns, partly because of the environmental things that

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1 we represent.
2 But also because we don't think that you can
3 improve water quality if you don't restore the vegetation
4 between the receiving water and the pollution source.
5 We think that having rip -- healthy riparian,
6 healthy wetlands, vegetated buffers is essential to
7 excess -- to -- is essential to success. Thank you.
8 So in the February draft order you had 70 -- or
9 100, 75 and 50-foot buffers. In November it went down to
10 30 feet, just around impaired waters.
11 We don't see -- maybe we missed it. But we
12 don't see any requirement in this order. It basically
13 says that you'll have a plan. And you'll basically talk
14 about, you know, how -- how you're going to protect.
15 But we don't see an actual, you know, specific
16 buffer. And we think that that is important.
17 So we basically eliminate all the chit-chat.
18 And we, basically, say a vegetated buffer strip of at
19 least 30 feet shall be maintained. Now, tier here, means
20 something different.
21 Tier 2 and 3 streams based on the National
22 Hydro -- Hyd -- Hydrography Data Set -- Data Set Plus.
23 And a vegetated buffer strip of at least 50 feet shall be
24 maintained along lakes, wetlands, estuaries and other
25 natural bodies of standing water.

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1 We simply believe that without a buffer
2 regulation, you're not going to be able to protect water
3 from sediment, the toxics that are attached to that
4 sediment. We think this requirement is essential.
5 Let me basically end -- and I think I'm well
6 within my time -- so I'll do kind of what Mr. Merkley
7 said - not that it will happen - but that's that I will
8 reserve time for after everyone has gone, to make
9 remarks. That's what he asked for. If I have some time,
10 I'll do the same thing.
11 CHAIR YOUNG: We're not going to have time
12 today for that.
13 MR. SHIMEK: I --
14 CHAIR YOUNG: So --
15 MR. SHIMEK: -- agree.
16 CHAIR YOUNG: -- if there's anything you want
17 to say today, you better say it now.
18 MR. SHIMEK: I will.
19 CHAIR YOUNG: Okay?
20 MR. SHIMEK: Let me, basically, say that --
21 that -- that, you know, there's a difference of approach.
22 One approach is: Look, let us install some
23 management practices. Let us go out there and do some
24 good things.
25 One of the things that you've heard from the

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1 growers is that they need certainty.
2 You know, frankly, I think, that regulatory
3 certainty is one of the best things that you can offer
4 these guys. That's my opinion.
5 I know that they don't like that idea. But to
6 have a set of baseline regulations that say here is what
7 we're to achieve, you know, go out and do it.
8 That, to me, is your role. Your role is not to
9 protect lettuce. Your role is not to protect
10 agriculture. Your role is to protect water.
11 And I agree that protecting agriculture is
12 important. It's a value that we all share. If that land
13 moves from agriculture, it could potentially be
14 developed. That doesn't serve my conservation interest
15 well, either. And it probably doesn't serve water
16 quality well, either.
17 But groundwater, it's hurting people. Surface
18 waters, it's hurting otters. It's -- things out in the
19 ocean. It's certainly hurting -- the toxicity is hurting
20 the streams themselves.
21 Let me just finish up by -- by quoting from
22 this study, which -- which is what I have copies for you.
23 And this is for the Central Valley.
24 But it says -- and it's peer reviewed. Both
25 the methodology and the results were peer reviewed.

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1 With the cost of public water service added,
2 the average total household water costs constitute 4.6
3 percent of the median household income, more than three
4 times the affordable threshold for drinking water
5 recommended by the U.S. EPA.
6 I'll para -- take another quote:
7 Currently, 100 projects -- this is within that
8 region -- to address nitrate contamination in community
9 water systems are on the CDPH waiting list, with a total
10 cost of \$150 million, and an average project cost of just
11 over one million.
12 These are costs that -- that the discharger is
13 not having to bear. Other people that cannot afford it
14 are having to bear these costs. There is a fundamental
15 right to clean drinking water.
16 There is a big portion of your population, in
17 the Central Coast, that is not realizing that fundamental
18 right.
19 Thank you.
20 CHAIR YOUNG: Okay. Thank you.
21 MR. SHIMEK: Any questions?
22 CHAIR YOUNG: Any questions for Mr. Shimek?
23 Okay.
24 MR. SHIMEK: Come on. You asked questions of
25 everybody else.

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1 CHAIR YOUNG: Okay.
2 MR. JEFFRIES: I'll ask you one question.
3 You had stricken out part of it and put in
4 eliminate --
5 MR. SHIMEK: Yes.
6 MR. JEFFRIES: -- contamination. And if you
7 can't achieve that elimination totally, even if you lay
8 the land fallow and don't farm it, and you don't -- still
9 don't achieve the elimination, what is your suggestion
10 then?
11 MR. SHIMEK: Well, I think, first of all, part
12 of the suggestion is in the language there. Because if
13 it goes fallow, you're -- you're going to be dealing with
14 legacy contaminants; right?
15 And it basically excludes -- it says, look, if
16 you can show that it's legacy contaminants, you're out.
17 You don't have to deal with it.
18 And -- or -- I'm sorry. That was probably a
19 different place.
20 So you do have to -- but let me answer it a
21 different way.
22 I'm not a lawyer. But I believe that it is
23 within the law that basically says toxic discharges are
24 illegal, you can't do it.
25 So I think we have to find a middle ground. I

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1 think the goal that we are setting for this five-year
2 period is to eliminate toxic discharges.
3 I don't think we will achieve that every place
4 along the Central Coast. The goal for -- that goal of
5 eliminating toxic discharges is fundamentally different
6 from the other goals of reduce and minimize.
7 MR. JEFFRIES: Well, I think the strawberry
8 people were pointing out that with their use, they
9 wouldn't be adding to or causing the problem and so,
10 consequently, they shouldn't be totally responsible for
11 what's there.
12 MR. SHIMEK: I -- I --
13 MR. JEFFRIES: And -- and just to follow that
14 up --
15 MR. SHIMEK: I'm sorry.
16 MR. JEFFRIES: -- it -- it -- and I know
17 somebody said it's going to take a hundred years to
18 probably achieve everything that we'd like to achieve.
19 It probably took us 150 years to get to this
20 point in time today --
21 MR. SHIMEK: Right.
22 MR. JEFFRIES: - with the problem.
23 So it's obvious that we can't sure all this
24 overnight. And it's going to take a long period of time.
25 It may not take -- it may take more than five years. It

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1 may take more than 10 years. It may take more than 50
2 years.
3 I don't know. I'm not a scientist.
4 MR. SHIMEK: So, I guess I would -- I would
5 just answer that in two ways.
6 First of all, I think, that you -- we need to
7 parse out the difference between toxicity and nutrients.
8 Toxicity, you're talking about half-lives of
9 the current pesticides in use being weeks and months.
10 Certainly, they can adhere to sediments and last a little
11 bit longer. But we're not talking years.
12 And, with nitrates, it's a much literally
13 deeper problem. And will be with us for a long time.
14 I don't -- I think the growers would say, the
15 toxicity is a much easier problem to deal with.
16 The second place, that I would say as far as
17 the Strawberry Commission goes, is, if you recall, at the
18 meeting in this room -- the last time we had -- when we
19 had the public meeting, you had one of the larger
20 strawberry growers in the region stand up and say -- and
21 this is where the -- the question from Ms. Hunter is very
22 appropriate - what happens during -- not during the
23 growing season, but in between?
24 And he stood up here and said: If I don't have
25 the opportunity to flush the salts that have accumulated

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1 below the root zone, I can't grow strawberries. That's
2 what he said.
3 Flush salts. That's a discharge.
4 Now, I'm not saying that we need to send
5 everybody to jail. I'm simply saying that I think that
6 -- that the list of high risk is appropriate right now.
7 And I think that there's abil -- the ability for,
8 especially in an industry as progressive as the
9 Strawberry Commission, to prove their way out of Tier 3.
10 And I hope they have -- take that opportunity
11 and will do just that.
12 MR. JEFFRIES: Well, I got you one question,
13 anyway.
14 CHAIR YOUNG: Okay.
15 MR. SHIMEK: All right.
16 CHAIR YOUNG: Thank you very much.
17 MR. SHIMEK: The drinking water stuff is --
18 this is also the letter that -- that you received from
19 California Department of Public Health.
20 I think that reinforces the importance of
21 dealing with something about nitrates.
22 Thank you so much.
23 CHAIR YOUNG: Okay. Is Ms. McCarthy here? She
24 leave already? Mibs McCarthy (phonetic). Okay. All
25 right.

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1 MR. BRIGGS: Okay. So want to keep going on
2 with our list of --
3 CHAIR YOUNG: Yeah. Next would be the
4 Environmental Justice Coalition for -- Coalition for
5 Water.
6 (Off the record)
7 CHAIR YOUNG: Okay.
8 MS. BHATNAGAR: A lot of people that came with
9 me, have left. They were not able to stay the whole day.
10 Unfortunately, they have been here since 8:15,
11 as, of course, a lot of other people have.
12 But I will try my best to represent their
13 comments, and the people that are remaining will try
14 their best to do so, as well.
15 Thank you for this opportunity to speak.
16 My name is Dipti Bhatnagar. I work with the
17 Environmental Justice Coalition for Water. And, I wanted
18 to stand up here and speak because the energy, I thought,
19 was going a little low. And I -- I have a colleague to
20 help change slides. I hope that's okay.
21 CHAIR YOUNG: Yes.
22 MS. BHATNAGAR: Next, please.
23 The Environmental Justice Coalition for Water
24 is a statewide coalition of more than 80 groups. Which
25 includes, non-profit organizations, community --

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1 community-based organizations, as well as Native American
2 tribes.

3 And our mandate is to focus on water justice
4 statewide. And that looks like different things in
5 different places. And it has become really clear to you,
6 I'm sure, that in the Central Coast of California, water
7 justice has to do with drinking water contamination
8 issues.

9 So that's what we've been focusing on in this
10 region.

11 Next, please.

12 We convened a -- a -- a water and climate
13 justice, convening in Oakland last week. And one of the
14 conclusions that the group came to was that irrigated
15 agriculture in California uses 80 percent of California's
16 developed water, which means, it's a very significant
17 greenhouse gas polluter, as well.

18 The reason that I'm bringing this up and the
19 reason that I'm in the room today is that I care very
20 much about agriculture in the Central Coast and in the
21 rest of California.

22 And I'm here because I want it to stay and I
23 want it to become sustainable. And part of how it will
24 become sustainable is what I'm going to talk about next.
25 But I wanted to set that up, that it's not just the water

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1 quality issues, it's also irrigated ag, as a whole,
2 that's very unsustainable currently.

3 Next, please.

4 This has been talked about before, but I wanted
5 to reiterate it because these are the people that I
6 represent and it's my responsibility to bring up that
7 these are real impacts happening to real people.

8 And the last line of this statement is the --
9 is what I wanted to focus your attention on; that the
10 disproportionate burden of nitrate-contaminated water is
11 falling on the most vulnerable; the babies, the infants
12 and the elderly.

13 And it is very much an issue that needs to be
14 addressed.

15 Next, please.

16 And I wanted to focus -- so there's been a lot
17 of conversation, I know, about well data and all of that
18 other stuff. There's been some kind of -- some efforts
19 to raise confusion. But I don't think there is
20 confusion.

21 I think that the nitrate contamination problem
22 and its effects on people is very clear. And I wanted to
23 follow up on something that Angela said, which is that,
24 even if the date that we're looking at is public supply
25 wells, which cost a lot of money to drill really deep and

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1 to clean up nitrate contamination before providing it to
2 cities.

3 Really, what I am here to focus on is the
4 smaller systems. And there are thousands of such small
5 systems in the Central Coast region. And these are the
6 ones that are most vulnerable.

7 Next, please.

8 So we made a public records request to Monterey
9 County Environmental Health, just as a -- just as an
10 example. And we didn't look at 10-year-old data or
11 20-year-old data. We looked at their latest data source,
12 which was 2009 to 2010.

13 And we looked at their data for nitrate
14 contamination for all the wells that they sampled in this
15 particular year. We made a public records request, and
16 then we also found out the information is available on
17 the web site. So that link is up for anyone to see.

18 They found 83 water systems with nitrates that
19 were over 45 milligrams per liter.

20 Next, please.

21 But I wanted to point out two additional facts
22 about the data. One of those is up on your screen right
23 now. And I want you to see the scale of the problem.

24 So the red bars represent 83 different water
25 systems. And the 23 in the first bar are actually in

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1 addition. They are 40 to 45, 45hich means, they're also
2 very close to the limit.

3 And I want you to see that this goes all the
4 way till 300-plus. This is the extent of the problem
5 that we were talking about a little while ago.

6 Next, please.

7 And this is the other thing I wanted you to
8 focus on. It's a scatter plot looking at how many
9 connections were -- was that particular well feeding
10 versus the nitrate contamination.

11 As you can see, the most severe nitrate
12 contamination is in the wells with the least amount of
13 connections. Which means that it's -- as I was saying
14 earlier -- it's the small systems that are being very
15 negatively impacted.

16 And the cost of treating every single
17 individual, small system, as you can imagine, would be
18 very high. And I'll come to that in a second.

19 Next, please.

20 So this is it. How do small communities get
21 clean water? We don't have a lifeline water rate in
22 California. And you've heard people come up here and
23 talk to you about either drinking contaminated water,
24 paying a whole lot for replacement water or -- what was
25 the third thing? -- paying very high water rates.

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1 And you'll hear, hopefully, testimony on all
2 three of those today.
3 And I wanted to bring up one fact, which is not
4 in the slides. Because I also just received this
5 information. It's an extension of the report that Steve
6 Shimek just showed to you, which was for the Central
7 Valley.
8 But I had the Pacific Institute look at the
9 Clean Water State Revolving Fund, and see how many
10 applications were pending for nitrate cleanup drinking
11 water projects for the Central Coast region. And that
12 number is 61.4 million.
13 These are just the people who have applied.
14 And we use the Clean Water State Revolving Fund quite a
15 bit. If we encounter a small community that does not
16 have a safe drinking water source, we would try and apply
17 to that fund.
18 So, actually, it's very interesting the point
19 that -- that got brought up earlier -- Dr. Hunter brought
20 it up - about acting at the local level. And we have
21 this phrase, think global, act local, which means, keep
22 your think -- encompass everything while you're thinking
23 about the problem and then you act locally on it.
24 So we are acting locally with small communities
25 that don't have clean drinking water right now. Because
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1 we think that's unpardonable.
2 At the same time, I'm here to tell you that
3 this is what it costs. Right now, the applications
4 pending with the Clean Water State Revolving Fund for
5 nitrate-contaminated water in the Central Coast is 61.4
6 million.
7 So when we are talking about undue financial
8 burden, I think that would count at undue financial
9 burden to the state and to everyone of the state, as
10 well.
11 Next, please.
12 So I wanted to address which draft provides
13 true environmental justice. Which means, which draft
14 will be truly protective of groundwater quality and of
15 the people that depend on it.
16 We truly support the February 2010 draft as the
17 most protective of groundwater and surface water quality.
18 And there have been many rollbacks since last year's
19 draft.
20 But we do still support the March 2011 draft,
21 but with the required revisions that you heard Steve
22 Shimek just talk about. We are signed on to that letter
23 as well. And we support those -- we support the March
24 2011 draft with those required revisions.
25 The ag alternative. I have had conversations
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1 with ag representatives about it. And I have been told
2 that we cannot meet water quality standards.
3 Hence, there are -- there are no water quality
4 standards in the plan because we cannot meet them. Which
5 -- which tells me, when I think about eyes on the prize:
6 What is the ultimate reason why we're here in this room?
7 We want to clean up water. We want to have
8 acceptable water quality standards and for the water to
9 meet it.
10 And if I'm being told that we cannot meet it,
11 hence, there are no water quality standards, it is not
12 acceptable to me, which is why I do not support that
13 draft at all and I do not support the process that has
14 been outlined here, because it does not have that element
15 of groundwater monitoring and then following up to see
16 how to improve that data that has been received.
17 And I wanted to take it a little bit broader to
18 what's going on at the state level. Because we're a
19 statewide organization, we have those perspectives, we
20 are working in different regions on the same irrigated
21 lands issues.
22 The human right to water bill has been filed in
23 the legislature. And it's actually a package of bills
24 that works to ensure water justice.
25 And one of my colleagues from the Central
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1 Valley said that declaring a human right to water is one
2 thing; figuring out -- figuring out how to guarantee
3 access to it is essential. And I think that's where this
4 board comes in.
5 Next, please.
6 And the reason I bring this up, is that I feel
7 what's happening -- this -- this process that's being
8 undertaken by the regional board is very much in line
9 with this positive water policy that's being worked at at
10 the state level, and including elements of environmental
11 justice.
12 This is happening at the state level. So the
13 fact that it's happening in your ag order process is very
14 important.
15 And I want to say that your task is very
16 difficult. As we've heard in the room today, there's
17 been tons of heartbreaking testimony. There's been tons
18 of very angry, very difficult testimony. And I -- I -- I
19 know that your task is very difficult and very
20 politically charged, not to mention.
21 But it's really commendable. And I think there
22 have been some attacks on the staff today. And I want to
23 say that we stand with staff and we support their -- the
24 work that they've been able to do in prioritizing human
25 health and drinking water concerns.
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1 And you are a regulatory agency. So I would
2 really urge you to do exactly that, to regulate; and to
3 regulate ag, in this case.
4 There are -- I was listening to the radio in
5 the morning. And there are really big things happening
6 in the world. There is earthquakes and tsunamis and
7 nuclear threat in Japan; there is -- god only knows
8 what's happening in Libya. And Jean-Bertrand Aristide is
9 going home to Haiti today, which is a really big step.
10 And for us to have to worry about whether or
11 not the water that we drink or that we feed our babies
12 will kill us or will impact us in the long term, I think
13 is -- is something - we deserve more than that.
14 And I really urge you to accept the staff to --
15 the March 2011 draft with the required revisions, in the
16 interest of environmental justice and drinking water
17 protection. Thank you.
18 CHAIR YOUNG: Thank you for your comments.
19 Any board questions?
20 Okay. Thank you very much.
21 Next speaker is with the Coastal Alliance. And
22 then, Channelkeeper after that. And then the Central
23 Coast Alliance versus --
24 UNIDENTIFIED SPEAKER: I'm with the Central
25 Coast Alliance. Is there a different Coastal Alliance?

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1 CHAIR YOUNG: It says Coastal Alliance.
2 Roger?
3 MR. BRIGGS: There are two. Yes.
4 CHAIR YOUNG: Okay.
5 UNIDENTIFIED SPEAKER: It's 16 minutes. I'm
6 asking -- I'm with the Coastal Alliance United for a
7 Sustainable Economy. But I don't know if somehow that
8 got, maybe, written --
9 MR. BRIGGS: Okay. Maybe that's a shortcut.
10 Eight minutes.
11 Yes. Eight. Right.
12 UNIDENTIFIED SPEAKER: Sixteen.
13 MR. BRIGGS: I saw right through it.
14 UNIDENTIFIED SPEAKER: I think there's only one
15 Coastal Alliance in the room.
16 CHAIR YOUNG: Yeah.
17 UNIDENTIFIED SPEAKER: Is there two?
18 CHAIR YOUNG: Okay. All right.
19 MR. BRIGGS: All right.
20 UNIDENTIFIED SPEAKER: Okay. That one.
21 MS. MORALES: Good afternoon, members of the
22 board.
23 My name is Maricela Morales and I serve as
24 deputy executive director of the Central Coast Alliance
25 United for a Sustainable Economy; CAUSE, for short.

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1 We are based in Ventura County but we serve the
2 six-county Central Coast region. For us, the Central
3 Coast region includes Ventura up through Santa Cruz
4 County.
5 For the purposes of this presentation, I'm
6 sharing information about the Central Coast, as you
7 identify it geographically, from Santa Barbara up through
8 Santa Cruz County.
9 And I want to share also, as well, that
10 separately I'm a retired city council member and mayor of
11 a coastal community in Ventura County and served on the
12 Ventura Council of Governments and was a representative
13 from that body to the Southern California Association of
14 Governments.
15 So for us at CAUSE, our mission is to realize
16 social, economic and environmental justice. And these
17 eight minutes will focus on that.
18 This board, this body is a -- is a public
19 board. And, as such, its constituents, per se, are the
20 public. And we spent much of today focusing on -- from
21 my perspective -- on the concerns of a hundred growers
22 that may or may not fall into Tier 3.
23 This body's constituents as, again, I see it,
24 are the 1.2 million people that are in the Central Coast
25 Water Board region.

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1 In particular, there is the low income
2 communities of color in this region. And I'm going to
3 share some 2010 census data for the Central Coast Water
4 Board region, with regards to water quality, agricultural
5 and people.
6 And, for me, this visual is very powerful
7 because it's showing what is pitted against one another,
8 unfortunately, and what we have to resolve.
9 But in the middle, ultimately, it's children
10 and families. And more and more in our communities, it's
11 children, such as this little girl -- she's from Oaxaca;
12 so indigenous, low-income and -- and people of color.
13 As has been said before, there are many issues
14 to address, one of which is our coastal resources. The
15 300 miles of the California coastline, covered by this
16 board, accounts for about 27 percent of the total
17 coastline.
18 And that, too, has an impact on the economy
19 locally. And to the extent that beaches are closed or
20 that people cannot enjoy that recreation, that is an
21 economic impact to the community, as well.
22 So the Central Coast accounts for 8 percent of the
23 state's total land area, but 26 percent of the state's
24 crop market value - and this information came from USC's
25 program for environmental and regional equity - so 26

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1 percent of the state's crop market value.
2 Nevertheless, we see food justice. So access
3 to these foods is no -- no more difficult or easier in
4 the Central Coast than it is for other parts of
5 California.
6 So these very same communities that are low
7 income, many of them farmworker families concentrated in
8 the Central Coast, who are working these fields, are not
9 having access to the very fruits and vegetables that
10 they're growing, for -- for health.
11 And, yet again, there is a large percentage of
12 the wealth, in terms of crop market value, in this
13 region.
14 So on top of not having access to the very
15 fruits of their labor, literally, they are pressed with
16 the environmental concerns that then become very
17 personal, physical health concerns for them, including
18 pregnant women; and that being pesticides.
19 And we've talked about the impacts of
20 pesticides to waters. But I want to point out that these
21 communities are facing not only that, but on top of that
22 the exposure directly when they are working in the
23 fields; the majority, 86 percent, being Latino.
24 So, I'll read just some of these. These are
25 directly from the report. It's a -- it's a litany. And

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1 it's only part of the litany of the impacts.
2 The concentration in the Salinas Valley and
3 Santa Maria, in the Hollister groundwater basin, the
4 California Department of Public Health has identified
5 over half of the drinking water supplies there is
6 vulnerable to -- because of discharges from
7 agriculture-related activities; the costs of groundwater
8 pollution, as has been stated before. The excessive
9 concentrations of nitrate or nitrite in drinking water
10 being hazardous to human health.
11 Moreso -- these are more statistics from the
12 report - 82 percent of the worst water quality sites are
13 in the Salinas and Santa Maria areas.
14 So that gets us to the concentrated poverty, so
15 the people that are dealing with these problems.
16 In this community, there has been prosperity
17 for some. But the lowest income workers -- and, again,
18 the farmworkers would fall into this -- have seen losses
19 in -- in income, while the wealthiest in the region have
20 seen gains.
21 And while I understand that growers have a
22 short -- or a small profit margin, I doubt that they're
23 in the lowest 10 percentile. And that's where these
24 families are at.
25 So this community -- this is 2010 census data

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1 -- Central Coast is now 47.8 percent people of color.
2 And that includes Latino, Black, Asian Pacific Islander
3 and Native American; do almost half, one out of two.
4 But if we look at the communities in which the
5 concentrated contamination is, they are over-represented
6 by people of color; 69 percent in Hollister, and in the
7 Salinas Valley, the community of Chualar, which I've
8 heard since 2001 has had difficulties with health --
9 quality water - almost 100 percent people of color;
10 Gonzales, 91 percent; Santa Maria, 76 percent; Salinas,
11 83 percent. Salinas is, by far, the largest city in the
12 region; 150,000 people. The next largest city is
13 100,000, and that's Santa Maria.
14 So, by far, the people impacted are the
15 poorest, and people of color.
16 Median income. Central Coast it ranges
17 anywhere from 58,000 to 66,000. Nevertheless, again,
18 poverty in -- concentrated in these areas, you know, as
19 low as 41,000. That's 20,000 -- 25,000 actually -- less
20 than the -- the high median income.
21 Big, big differences. And these are the very
22 communities that are having to pay out of pocket or the
23 municipalities, where they are concentrated in, having to
24 pay, somehow find the revenue in order to cover the
25 costs.

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1 The point being that we continually hear from
2 the industry: Where is the money?
3 And yet, you know, we haven't seen here today
4 that the people have had the money to -- to pay for
5 studies from universities, to pay for attorneys, to pay
6 for independent scientists to come here, because these
7 folks don't have the money to do that. They don't have
8 the money to defend themselves. And that's why we're
9 here today.
10 So to end, echoing what has been said by the
11 Monterey Coastkeeper Coalition, as well as the
12 Environmental Justice Coalition, we -- our first choice
13 is the February 2010. But if -- if not that, then the
14 current version, with the modifications communicated by
15 the Mon -- Monterey Coastkeeper.
16 One recommendation. You know, little has been
17 said about small farms. But in speaking with Dr. Steven
18 Gliessman, the chair of agroecology at U.C. Santa Cruz,
19 he saw a need to further actually look at the impacts to
20 small, sustainable farms.
21 And so, that would be a recommendation.
22 Thank you very much.
23 CHAIR YOUNG: Thank you for your comments.
24 MR. JEFFRIES: Mr. Chair, can I ask her where
25 she got her data from?

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1 MS. MORALES: Yes. Which -- which data was
2 that?
3 MR. JEFFRIES: Well, you gave percentages of
4 cities. Then you gave -- this is the median income.
5 Where did you get that information?
6 MS. MORALES: Yes. So this is from the U.S.
7 census for the larger communities. But communities that
8 are either under 20,000 or under 50,000, you have to go
9 to the American Community Survey, ACS, data.
10 And that's a survey that's done either every
11 three years for the cities over 20,000 or every five
12 years for communities under 20,000.
13 MR. JEFFRIES: So was this taken off the 2000
14 census, or the 2010 census?
15 MS. MORALES: For -- actually, for what is
16 available for the larger communities is 2008 data.
17 Again, what is available for smaller
18 communities, it's the American Community Survey, which is
19 done -- it's a survey that's done either on a three-year
20 basis or on a five-year basis.
21 So that's -- that's most current information
22 available.
23 MR. JEFFRIES: That's -- so Salinas on this is
24 the only one that meets the large city? It's the only
25 one that's over a hundred thousand.

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1 MS. MORALES: Right.
2 Well, let's see. Yes. Yes.
3 Santa Maria might have fallen into -- into
4 that. They're at about a hundred thousand right now.
5 But most -- most of the Salinas Valley, with
6 the exception of Salinas, that information came from ACS
7 data.
8 MR. JEFFRIES: And your previous slide to this
9 one, where does that data come from?
10 MS. MORALES: That -- that comes from 2010
11 census data.
12 MR. JEFFRIES: 2010.
13 MS. MORALES: Yes.
14 CHAIR YOUNG: Any board comments or questions?
15 MR. JEFFRIES: Thank you.
16 CHAIR YOUNG: Thank you very much for your
17 comments.
18 Okay. Channelkeeper.
19 So, folks, this is our last, kind of, group
20 presentation, if you want to call it that, or extended
21 presentation. And then, we'll talk about how to divvy up
22 the rest of our time with whatever's left.
23 MR. PITTERLE: Okay.
24 Thank you and good afternoon.
25 I'm Ben Pitterle. I'm the watershed programs

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1 director with Santa Barbara Channelkeeper.
2 I run our water quality monitoring programs.
3 We've been doing watershed monitoring in our area since
4 2001. I'm quite familiar with water quality issues in
5 our area.
6 I also served as a member on the stakeholder
7 panel that met from December 2008 to September 2009. And
8 I followed this issue closely throughout this entire
9 process and throughout the multiple drafts and revisions
10 that have been made.
11 Because of these experiences, I feel as though
12 I have earned some perspective, that I want to offer
13 today. I think it's important to consider perspective,
14 given some of the reoccurring themes that I keep hearing
15 from the agricultural community, who has been largely
16 opposed to this process.
17 And one of those themes -- what -- what I keep
18 hearing -- is that the agricultural community has not
19 been represented and that their concerns have not been
20 considered by staff or incorporated into the order.
21 Now, what I want to do with my time here, is
22 just briefly do some comparisons of early versions of the
23 order and the current draft and give some examples of
24 what the latest draft will actually mean for growers in
25 my area.

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1 And when we do this, what I'm -- I'm hoping
2 that this will help some people realize just far -- how
3 far we have actually come since that first draft and, for
4 better or worse, how much the agricultural community's
5 input actually has been incorporated.
6 And I think what you'll see is that this draft
7 proposed today is -- is very far from the broad brush
8 stroke set of regulations that the ag community has --
9 has voiced concern about.
10 And, in fact, the reality is that the latest
11 draft will likely not pose any significant additional
12 requirements on growers in my area at all and, in some
13 cases, might even make things less stringent.
14 So my area -- my work covers the watersheds
15 from Point Concepcion east to -- for this region's sake
16 -- Rincon Creek or the edge of Santa Barbara County. We
17 do some work in the Ventura River, but that's the L.A.
18 region.
19 We cover the frontal rain. So these are the
20 coastal streams that drain to the Pacific, not the Santa
21 Ynez River. There are many more streams than are
22 actually shown here on this map. But it gives you a
23 sense of -- of the area.
24 And we do have significant agriculture.
25 Primarily, in the Goleta and Carpenteria valleys.

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1 So let's talk about the tiering system we're
2 all familiar with by now. There are three tiers. Now, a
3 useful comparison that's been made by staff and others is
4 how the tier system compares to the existing 2004 order.
5 Tier 1 is less stringent. Tier 2 is about the
6 same, and we can expect that Tier 3 growers will likely
7 have more requirements than -- than they do today.
8 Now, back in February, we didn't have such a
9 thing as a Tier 1 category. But there was something
10 called low risk. And I want to look closely at what it
11 took to get into that low risk category.
12 Growers A had to eliminate all tailwater. B
13 they had to be more than a thousand feet from any
14 impaired surface waterbody.
15 So today, Tier 1 -- it's actually much easier
16 to get into Tier 1 today. Growers do not need to
17 eliminate all of the -- their tailwater. They can't use
18 chlorpyrifos or diazinon. They have to be more than a
19 thousand feet from these specific types of impairments.
20 And if they grow high nitrate risk crops, then
21 they have to be less than a thousand acres and more than
22 a thousand feet from a public supply well.
23 This is important. Tier 1 is less stringent
24 than the existing 2004 order primarily because they won't
25 be required to submit annual compliance forms.

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1 Now, I want to give you an example of what this
2 could mean for a -- our area. So this is San Jose Creek.
3 This is an aerial photo, and you can see there, that
4 yellow tack represents one of our monitoring sites.
5 You can see from this photo, there's really not a
6 whole lot in the way of development upstream of that
7 monitoring site.
8 If you zoom in a little closely, you see there
9 is some development, and it's pretty much, entirely
10 agricultural development. And it's highlighted here in
11 orange.
12 Now, these operations are not high-risk crops.
13 They are not within a thousand feet of a nutrient,
14 sediment, pesticide, toxicity or turbidity-impaired
15 water.
16 And the first thing I would expect a grower to
17 do, is if they're using chlorpyrifos or diazinon, they're
18 probably going to switch to effectively put themselves
19 into Tier 1.
20 Now, San Jose Creek isn't listed for those
21 specific impairments. But it is listed for many water
22 quality impairments. And you can see what they are here.
23 They're -- they're displayed.
24 And I know that there are probably several
25 people in this room that will immediately start arguing

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1 and say that these things actually aren't agri --
2 agricultural contaminants. But that actually just isn't
3 true.
4 We know salts can be. And the fact is, that un
5 -- uncomposted or -- or partially composted cow manure is
6 a source of fecal bacteria. And studies have shown that
7 pathogenic organisms can persist for long periods of
8 time, up to almost a year, even in properly composted
9 manure.
10 Okay. I'm really not here to argue whether or
11 not these specific impairments are caused by ag or not.
12 And -- and I will give them this, that where there's
13 smoke does not necessarily mean that there's fire.
14 But it doesn't mean that there, necessarily,
15 isn't. Okay? And if this -- you wouldn't simply ignore
16 a smoke alarm if it went -- if it went off in your house.
17 And if you look at this map, you look where our
18 monitoring site's located, and you look at the condition
19 of this stream, are we really prepared to put this type
20 of operation in Tier 1? And are we really ready to do
21 that without considering, in fact, a single thing about
22 what actual practices are occurring?
23 All that we're considering, all that we know,
24 is that they're not using two specific pesticides.
25 Please keep in mind, that this isn't a

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1 discussion about requiring more of this operation. What
2 we're actually talking about is putting them in a
3 category where there will be less required. And,
4 frankly, we think that's extremely generous to the
5 agricultural community.
6 And, in fact, we think it's neither wise or
7 appropriate. We think Tier 1 should be reserved for
8 sustainability in practice certified or other certified
9 programs approved by the executive officer or, at a
10 minimum, require elimination of tailwater.
11 And I want to run, quickly, through some of the
12 other requirements. So individual discharge monitoring.
13 In February, all dischargers were going to be required to
14 do discharge monitoring. Today, it's reserved only for
15 Tier 3 growers.
16 Milestones. Back in February, all dischargers
17 were required to eliminate discharges to any waterbody
18 from toxicity, sediment, turbidity, nutrients and salts.
19 Today, only Tier 3 dischargers are actually
20 required to demonstrate reduction through actual
21 monitoring, and the percentage of production has been
22 reduced from all to 75 percent for turbidity and sediment
23 and 50 percent for nutrient loads.
24 Nutrient and irrigation management. Back in
25 February, all dischargers through any waterbody were

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1 required to include very specific irrigation and nutrient
2 management information in the farm plan.
3 Today --
4 (Reporter clarification)
5 MR. PITTERLE: I'm sorry. I'm trying to -- I'm
6 trying to get through my presentation.
7 Well, today, only Tier 3 dischargers are
8 actually required to submit nutrient -- irrigation and
9 nutrient management plans.
10 It's -- it's apparent that Tier 3 is very
11 important in this order. So I want to look closely to
12 what it actually takes to get into Tier 3.
13 We're familiar, at this point, I think, with
14 the -- the two things that will get you there. First,
15 the growers who grow high nitrogen-risk crops and are
16 greater than a thousand acres in operation size.
17 Or, B, they apply chlorpyrifos and diazinon,
18 and they discharge to a 303(d) waterbody listed for
19 toxicity or pesticides.
20 So I want -- I'd like to look at one more --
21 another example.
22 This is a list of waterbodies in our area that
23 are officially impaired by either nutrients -- and
24 they're shown there on the left -- or pesticides or
25 toxicity, shown on the right.

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1 And now, the first thing you'd notice, if you
2 tour our area, and that you might notice if you take a
3 careful look at this background image, is that we don't
4 have a lot of high nitrate risk crops, as defined by
5 staff.
6 We have nutrient impairments. But most of the
7 ag activity in our area is actually orchards. It's --
8 it's citrus and avocados, and they aren't on the list.
9 We do have some row crops. But, again, if you
10 look closely at this example, which has some parcel
11 boundaries drawn, we do not have operations anywhere near
12 a thousand acres.
13 What does that mean for Tier 3, in terms of
14 nutrient requirements? It means we don't have any. Not
15 a single operation will be enrolled as Tier 3 for
16 nutrient risk from the Gaviota Coast to Ventura County.
17 And that means there will not be any irrigation
18 and nutrient management plans and no nitrogen balance
19 ratio targets.
20 We still do have pesticides and we have
21 toxicity listings. So we should expect that there will
22 be some additional requirements.
23 Except, to be honest, what I'm fully expecting
24 and what I guess many people in this room, either
25 publically or secretly, expect is that within two years,

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1 each grower along these toxic streams will simply switch
2 pesticides to avoid additional regulation.
3 They will not use chlorpyrifos or diazinon.
4 And, as a result, we will have no individual discharge
5 monitoring requirements in our area.
6 Now, will this solve the toxicity problem in
7 our area? Probably not. And we think this is another
8 huge gap. And to fill this gap, in addition to the
9 language that was presented earlier by Monterey
10 Coastkeeper, we feel as though pyrethroid pesticides, at
11 a minimum, should be added to the Tier 3 criteria.
12 So ag's own CMP study found that pyrethroid
13 pesticides were the most prevalent and severe sources of
14 toxic -- of toxicity to sediments in the region.
15 So why would you link Tier 3 requirements
16 solely to two other pesticides? We don't know why,
17 because it really doesn't make sense.
18 Finally, I want to speak quickly about riparian
19 buffers.
20 In February, all growers were going to be
21 required to have 50-foot buffers, minimum.
22 Today, only growers adjacent to sediment
23 turbidity temperature-impaired waterbodies must develop a
24 water quality buffer plan. That's not the same thing as
25 a minimum buffer.

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1 And I should add to this -- it's not shown --
2 but you almost must be in a Tier 3 discharger.
3 So what does this mean for our area? Here's
4 the list of all major waterbodies in our area that have
5 irrigated agricultural activities, and how many of these
6 waterbodies will be subject to the riparian buffer plan
7 requirements based on today's draft.
8 There's one.
9 So, again, this idea that the board is taking
10 broad-brush strokes that are going to significantly
11 affect the agricultural community at large is simply not
12 accurate.
13 And, again, this is my -- my main point. I --
14 it isn't that I think all of these operations should be
15 heavy -- heavily regulated. But it's that board staff
16 has taken great pains to incorporate the concerns of
17 agricultural community into this draft.
18 And, in our opinion, the proposed order swings
19 even too far in the oper -- in the opposite direction it
20 -- to be effective.
21 This draft has so many loopholes and is so
22 selective in how it applies its protections, that there
23 will be very large areas throughout the region that will
24 not benefit at all from the additional accountability and
25 enforceabil -- enforceability that was intended.

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1 To wrap it up, this is my son Wyatt. And this
2 is a picture of him in our backyard on Carpinteria Creek.
3 The creek runs through our property. And we're near the
4 bottom, near the -- near the ocean.
5 And you can tell from this photo that Wyatt is
6 very concerned. You can tell by that look on his face --
7 that's his concerned look. And he's concerned because he
8 found out that Carpinteria Creek is polluted and he feels
9 like he should be able to play in a creek that runs
10 through his own backyard, on his own property, without
11 having to worry about pollution.
12 And, frankly, I'm concerned, too. So are a
13 great many other people. And we're concerned that if
14 this process keeps dragging on - which is how it looks
15 like it may - if it keeps going the way it's been going,
16 pretty soon this order is going to be so watered down and
17 it'll be so toothless, that there will essentially be no
18 change at all.
19 I -- I think that's just the way ag wants it.
20 Frankly, I'm surprised -- I've been surprised so many
21 folks even bothered showing up today. I think they've
22 already won, and they don't even know it.
23 You know, in conclusion, I -- I ask you, please
24 consider what's been presented here, consider how far
25 this thing has swung since February.

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1 We don't think farmers are bad people. We
2 really don't. We -- we do strongly disagree about what
3 it's going to take to solve our water quality problems.
4 And we believe our water quality problems are -- are very
5 serious.
6 It's really time we move this thing along. And
7 we hope that you'll consider incorporating our
8 recommendations into the draft and -- and you recommend
9 its approval.
10 Thank you.
11 CHAIR YOUNG: Thank you for your comments.
12 Any questions for Channelkeeper?
13 Okay. Thank you very much.
14 I thought Wyatt was actually saying, hey, Dad,
15 I'm hungry. Where -- where's the snack you promised me.
16 Okay. Folks, we have not enough time to give
17 everybody three minutes. There's no question about that.
18 We don't have enough time for that.
19 We don't have enough time for staff -- I mean,
20 for the board to even kind of deliberate and decide what,
21 if any, recommendations to give.
22 And so those are both two very important
23 functions that have to get completed. I don't really
24 want to short circuit either of them.
25 I am thinking that we need to continue this

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1 meeting. And it would be sooner than the next board
2 meeting. Now, the next board meeting would be May 5th in
3 San Luis Obispo.
4 But we've spent a lot of time on this now. And
5 I think we're hopefully beginning -- at least, the board
6 is beginning to kind of narrow down some things in -- in
7 its mind, as to what it would like to see addressed by --
8 by staff.
9 I -- I'm thinking we should have a board
10 meeting just to deal with the balance of this -- whatever
11 we can't finish today -- sometime in April. Because
12 there's -- I don't trust that we can really finish this
13 if we, you know, attach this to another board meeting.
14 So I thought we were doing pretty good today,
15 just allocating one day for this. And look how wrong I
16 turned out to be. And we started at 8:15.
17 So we're going to need to think about another
18 day, Mr. Briggs and staff, as to when we could continue
19 this. What I would like to do is finish as much of the
20 public comment that we can today.
21 And then we'll talk about how much -- how we're
22 going to allocate that time. And I think we're going to
23 end up completing that -- the continuation of this board
24 meeting -- and then we'll have board deliberation and
25 comment and recommendations.

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1 So -- and just for the public, what would then
2 happen -- because they're -- because there would be
3 another board meeting after that.
4 So once we get staff recommendations, staff is
5 going to need to do what it does, make changes, analyze,
6 possibly receive more public comment on that. And then
7 there would be another board meeting.
8 So that's what I'm thinking. Does that make
9 sense, Mr. Briggs?
10 MR. BRIGGS: Well, it makes sense. Although,
11 the part about additional public comments -- my
12 understanding is that would be if there was something
13 that was significantly outside the realm of what we've
14 been discussing.
15 If it's -- if it's something within the scope
16 of the various options and alternatives that have been
17 already talked about and in our written materials, then
18 that would not necessarily prompt another round of public
19 comments.
20 CHAIR YOUNG: Okay. Well, we'll see --
21 MR. BRIGGS: Right. Because of the --
22 CHAIR YOUNG: -- after we get through --
23 MR. BRIGGS: -- because of the nature --
24 CHAIR YOUNG: -- the next --
25 MR. BRIGGS: And then -- and then what that

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1 would also allow is in April, then, essentially, you
2 would hope that -- assuming we don't have another board
3 member -- that then the panel would be able to vote in
4 terms of bringing a recommendation to the full board.
5 And that would be direction of staff, in terms
6 of what you want to see in that -- bringing that to the
7 full board.
8 CHAIR YOUNG: Right.
9 MR. BRIGGS: Right. Okay.
10 CHAIR YOUNG: So...
11 Any board comments or suggestions? Or you
12 don't like, you like, you want it different?
13 DR. HUNTER: I agree, that there's no way to
14 finish today. And -- and to try to squeeze it into
15 another regular board hearing, I don't think is doable
16 either.
17 I agree with you completely. So we need to
18 find another time --
19 CHAIR YOUNG: Okay.
20 DR. HUNTER: -- to do that between now and
21 then.
22 CHAIR YOUNG: Mr. Hodgkin, any thoughts on --
23 MR. HODGIN: I'm concerned that we use as much
24 time as possible for those who are here that want to
25 speak to -- let's -- let's get that on.

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1 And then, certainly, we're going to have to
2 have another meeting.
3 CHAIR YOUNG: Okay. All right. Mister --
4 MR. JEFFRIES: Well, I agree with that, Mr.
5 Chair. But I -- I think that another question would be,
6 since this order is going to terminate on -- the end of
7 March, then what happens? That hasn't been addressed
8 today.
9 CHAIR YOUNG: Mr. Briggs is going to have to
10 deal with that in an administrative function.
11 MR. JEFFRIES: Yeah.
12 CHAIR YOUNG: We can't vote on it.
13 MR. JEFFRIES: No. We can't vote on it.
14 CHAIR YOUNG: It's not in our hands. No.
15 MR. JEFFRIES: I agree.
16 CHAIR YOUNG: Mr. Briggs will have to figure
17 out with Frances what can be done about it.
18 MR. BRIGGS: Go to the mountaintop.
19 CHAIR YOUNG: Okay. All right.
20 Now, here's what I'm thinking about with the
21 speakers. We've got -- how many? -- 70. We have 70
22 cards. I don't know how many are still here.
23 I would like to make this suggestion, that
24 those of you that cannot make a continuation of this,
25 that perhaps you allow the others that are not going to

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1 be able to come to another board meeting --
2 Well, it would be in San Luis Obispo. Okay.
3 When? In April?
4 UNIDENTIFIED SPEAKER: Yes.
5 CHAIR YOUNG: You want us to pick a date now?
6 Does that help everyone's decisionmaking?
7 (Multiple speakers)
8 CHAIR YOUNG: Can't do that now?
9 MR. THOMAS: Mr. Chairman?
10 CHAIR YOUNG: Yes.
11 MR. THOMAS: One -- one consideration is that
12 you -- instead of adding a board meeting in April, add a
13 day to the May meeting --
14 CHAIR YOUNG: Okay.
15 MR. THOMAS: -- in San Luis Obispo.
16 MR. BRIGGS: May 4th, for example, 6th.
17 CHAIR YOUNG: Well, May 4th is a Wednesday.
18 What's that? You like Friday better.
19 MR. HODGIN: If we do it with the May board
20 meeting, then there won't be a chance for staff to make
21 adjustments after the panel discusses and -- and makes
22 suggestions.
23 CHAIR YOUNG: Well, see --
24 MR. HODGIN: So we won't be able to bring
25 anything to the board for approval.

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1 CHAIR YOUNG: That's right. I mean, at the May
2 meeting what would happen is, we would only be able to
3 tell staff the recommendations we think are appropriate.
4 And then, they still have to come back at a
5 later board meeting.
6 The question, really, is just: When do we have
7 the next board meeting to finish this?
8 Do it, like, on May 4th or 6th, or do we do it
9 in April?
10 And I'd rather get this over with be -- just
11 because this is taking a lot of time. And I have a lot
12 of thoughts in my mind right now. And now, I've got to
13 reduce it to writing.
14 And, you know, the -- the immediacy of it
15 leaves a little bit. And I don't want to wait too long
16 to complete this part of it. And I want to give staff
17 direction.
18 But if you -- if you want to back it up to the
19 May board meeting, then just tell me.
20 Mr. Hodgkin?
21 MR. HODGIN: Well, I just have to comment that
22 the May board meeting is also the National Day of Prayer.
23 That -- that may --
24 CHAIR YOUNG: Maybe we can do that instead.
25 MR. JEFFRIES: I think we'll do a lot of that

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1 between now and then, anyway.
2 MR. BRIGGS: It's also Cinco de Mayo. So we've
3 got to have a party.
4 CHAIR YOUNG: Okay. So I need some help, you
5 guys. And it's the board that's going to, kind of,
6 decide this, somewhat.
7 You guys want to do it in April. April? Can
8 we -- can we find a date, Roger, and --
9 MR. BRIGGS: I don't think we can do that right
10 now.
11 CHAIR YOUNG: Can't do that right now?
12 MR. JEFFRIES: For a continuance?
13 CHAIR YOUNG: Well --
14 Yeah. I think they're trying to --
15 MR. BRIGGS: Why don't we go -- go ahead with
16 comments.
17 CHAIR YOUNG: Okay.
18 MR. BRIGGS: So we --
19 CHAIR YOUNG: Well, okay.
20 MR. JEFFRIES: And how much time do we have
21 left?
22 CHAIR YOUNG: How -- how about it -- it -- can
23 we say that we can do this either the week of April 18th
24 or 25th?
25 Can we find a day to do this during the weeks

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1 of April 18th or April 25th? Can't do those two weeks?
2 You're out of town.
3 MR. BRIGGS: The difficulty with trying to do
4 it now is we have to --
5 CHAIR YOUNG: Yeah.
6 MR. BRIGGS: -- compare a lot of schedules.
7 CHAIR YOUNG: Okay. All right.
8 So that's not going to work.
9 So it will be in San Luis Obispo. That's all I
10 can tell you.
11 CHAIR YOUNG: Okay. Okay. April 7th is out.
12 But -- so we'll have to come back with a date,
13 and notice it. But -- so let's do this:
14 I'd like to give people that cannot make it to
15 San Luis Obispo and that are here as much time as
16 possible. Okay? I don't know how many there are of you
17 in that category.
18 So maybe you could give me a show of hands of
19 those that aren't going to show up in San Luis Obispo.
20 And, let me just say this, we're -- I'm going
21 to keep these cards. So that, you know, if you get the
22 time to speak now, this is just a continuation of this
23 board meeting.
24 And you're not going to be able to speak during
25 public comment in San Luis Obispo. It's the only way to

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1 make this fair.
2 So who can't make San Luis Obispo?
3 Okay. Good.
4 So let me -- and you've all submitted cards to
5 me? So I have cards? Okay.
6 So let's do this.
7 MR. BRIGGS: I'm sure -- have them --
8 CHAIR YOUNG: Line up.
9 MR. BRIGGS: -- have about five line up and --
10 CHAIR YOUNG: Okay.
11 MR. BRIGGS: -- say their name, and we'll pull
12 them out.
13 CHAIR YOUNG: Okay. So let's do that.
14 What I'd like to do - we'll -- we'll try this.
15 You'll get -- I think we can do three minutes
16 each; on the hands that I saw.
17 So if people could line up -- and I'm not going
18 to call names. I'm just going to let you come up, just
19 five at a time, and when there's five -- and you can line
20 up all the way to the back, if you want. But -- however
21 you want to do it, and that'll expedite this.
22 MR. BRIGGS: What we'll do is we'll just write
23 -- we'll write their names down. We can't -- we can't
24 sift through these every time.
25 CHAIR YOUNG: Okay.

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1 MR. BRIGGS: So we'll just write their names
2 down.
3 CHAIR YOUNG: All right.
4 MR. JEFFRIES: Bob, that's the quickest I've
5 seen you move in a long time.
6 CHAIR YOUNG: Okay.
7 MR. MARTIN: Thank you very much. I
8 appreciate --
9 CHAIR YOUNG: Hold -- hold on, one second.
10 Okay. So what staff is going to do is write
11 your names down. And that's what we're going to keep
12 track of. Okay.
13 So the cards, I'm not going to be looking at
14 now.
15 MR. JEFFRIES: Just give your name and --
16 CHAIR YOUNG: Just give your name.
17 MR. MARTIN: Yeah.
18 CHAIR YOUNG: All right.
19 MR. MARTIN: Thank you. My name is Bob Martin,
20 general manager or Rio Farms in King City.
21 I just wanted to comment on -- on some of the
22 things that we've done in the past and where we're going.
23 Over the past 15 years or so, our operation,
24 along with many others, has taken water quality
25 protection seriously. We farm over 6,000 acres in the

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1 King City area.
2 As technology brings us information that we can
3 use to lessen negative impacts on water quality, we
4 listen, we learn and we improvise.
5 The sheer size of our operation allows us to
6 experiment and utilize improved methods. If they've
7 proved successful, we're not shy in -- in sharing these
8 results with fellow farmers.
9 I have 15 growers that are raising onions for
10 -- for our company, right now. And I -- I share
11 everything with them.
12 Quick nitrate soil testing has been in our
13 program for close to 15 years now. Backflow prevention
14 devices have been in all of our wells for as long as I
15 can remember.
16 I can't understand why our large operation is
17 singled out in the draft -- staff's proposal, as the
18 highest risk category.
19 As if that isn't bad enough, your proposal
20 doesn't allow for any possibility for operations over a
21 thousand acres to move into a different tier, without the
22 exclusive written permission of your executive officer.
23 Where is the incentive for someone in Tier 3 to
24 improve their impacts on surface and groundwater?
25 I submit, that allowing for a true assessment

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1 of an operation's impact on water quality can only be
2 made objectively by a comprehensive review process of an
3 audit committee offered in the ag proposal.
4 Over the past 15 years, I have impressed upon
5 farmers the need to contain and capture their irrigation
6 tailwater. This hasn't been discussed here, yet, today.
7 In staff's proposal, all of these ponds must be
8 lined to not allow for percolation of this tailwater back
9 into the groundwater.
10 Typically, these ponds will contain a fair
11 amount of sediment that must be cleaned out at least
12 annually. If they are lined, that doesn't allow for that
13 activity. Can't do it.
14 First -- first of all, how does staff know that
15 the quality of the water -- that -- what is the quality
16 of the water in that pond? Why are they taking for
17 granted that it is laden with nutrient -- nutrients and
18 pesticides?
19 Even if there are some nutrients in that water,
20 why do they believe that the same constituents -- and at
21 those concentrations -- will penetrate multiple clay
22 layers above deep aquifers over a period of 30 to 50
23 years, to contaminate that deep groundwater?
24 What data currently exists that supports
25 staff's theory?

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1 At a recent nutrient and irrigation management
2 seminar -- and this is the one, I think, staff referred
3 to as all CCAs were there. No. They were all farmers.
4 And there was a -- there was about two or three CCAs
5 there - Dr. Thomas Harter, foremost authority on
6 groundwater in California, showed some very interesting
7 slides. And one, I grasped -- I grabbed onto real
8 quickly.
9 There's a graph showing nitrate changes of
10 shallow or young water in Monterey County.
11 Now, understand, young -- young water is
12 shallow water in sandy areas that can be reflected from
13 which you're applying, on the surface, to where you're
14 pumping from in a matter of a year to five years. That's
15 considered young water.
16 It showed a marked improvement regarding
17 nitrate contamination in each of these three 5-year
18 samples taken.
19 What does this show?
20 It was pretty obvious to me that whoever was
21 farming in that vicinity was -- was -- had made mark --
22 marked improvements in their fertilizer and irrigation
23 management practices.
24 CHAIR YOUNG: Can you -- can you wrap it up,
25 Mr. Martin.

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1 MR. MARTIN: So -- that -- that's it. I -- I
2 got more.
3 But you have the copy -- you have the -- the --
4 the graph from Dr. Thomas Harter. And if you need more
5 information, you can probably contact him to find out
6 what it's all about.
7 CHAIR YOUNG: Okay.
8 Thank you for your comments
9 MR. MARTIN: Thank you very much.
10 MR. HARTMAN: I'm Dick Hartman, president of
11 Biosphere and Enhancement Corporation out of Portland,
12 Oregon.
13 I have patents throughout the United -- through
14 United States patents and throughout the world regards
15 clean water fertilizer additive.
16 I drove eleven hours to get here. This 25
17 years, this is a culmination of wanting people to want to
18 be interested in this concept.
19 Submit, follow the money. Regards current
20 incentives to reduce the costs of government.
21 If I were a grower here, I think I'd say:
22 What? The nitrogen I paid that much money for is getting
23 on my neighbor's place? What?
24 The pesticides that I want just to be on my
25 farm is going somewhere else?

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1 I'll tell you. That stuff's expensive. They
2 don't want to lose it -- any money on it. They don't
3 want to lose that to anybody.
4 These -- there's somewhat of a rumor that a
5 upcoming congressman, or something, said maybe change the
6 EPA to the EHA, the environmental help association -- I
7 mean, agency.
8 The 50 - NRCS 501/590 program for best manages
9 -- management programs just learned is offering \$36 per
10 acre to any farmer who will try enhanced efficiency
11 fertilizers and -- check strips that can be checked.
12 Now, I submit a thought. When you monitorize
13 the activity that this staff is going to have, all your
14 time, all the groups here, and for the next five years --
15 when you monitorize that, I just submit a simple thought:
16 The Farm Bureau supported independent operation
17 here to look over things. What if they had a small
18 function -- small portion of the money that's going to be
19 spent, in following something up as nebulous as nitrogen
20 and made an incentive to growers, to say, if you'll do a
21 nitrogen and/or pesticide improvement tools, one of which
22 would be ours, then you will be able to get an incentive
23 pay? This \$36 on a 1,000-dollar - acre farm would be
24 \$36,000.
25 I think they could gladly -- and they will be

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1 glad to implement any modern tools that can -- can take
2 care of that.
3 So I submit that it will only take one person
4 about a year, with these incentives out here, to have the
5 growers know that that's possible to implement. And that
6 then would be accounted for easily by saying, here's the
7 record of all the growers who have done these
8 improvements.
9 Submit that would be cost effective and totally
10 effective. Thank you.
11 CHAIR YOUNG: Thank you for your comments, Mr.
12 Hartman.
13 MS. LEE: Robin Lee. I'm from Salinas.
14 CHAIR YOUNG: Your last name?
15 MS. LEE: Lee.
16 CHAIR YOUNG: Lee? L-E-E-?
17 MS. LEE: Correct.
18 Well, I want to -- I'd like to know that --
19 that the creek I live on is Santa Rita Creek. It's close
20 to north Salinas.
21 And it's been very -- I've seen a death -- it's
22 in the throes of death from the last, I guess, 20 or 30
23 years.
24 People I've talked to, who grew upon the creek,
25 will no longer let their children play in the creek that

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1 they did as kids because they're concerned about
2 pollution.
3 So this -- the creek is highly degraded by ag
4 runoff. There used to be ranch land in the headwaters,
5 and that is converting to row crop.
6 And with the increase of row crop acreage, the
7 -- the -- the degradation has gotten greater and greater.
8 And now there's sediment problems causing
9 flooding and damage. And the -- and the people I've
10 talked to, they've talked to all officials in their area,
11 and they have no recourse.
12 Now, it's directly related to the sediment
13 coming off the row crop land -- irrigated row crop land,
14 that was once ranch -- range land.
15 So what recourse these people have that now
16 they're getting damage to their property and their
17 structures because of sediment runoff from irrigated ag
18 land through stormwater and irrigated water runoff.
19 It used to be an intermittent stream. Now it's
20 perennial, because ag runoff. And every time the water
21 hits the stream, it's carrying massive amount of
22 sediment.
23 And then, we know sediment transports all
24 manner of other things with it.
25 So what recourse these -- do we have with this

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1 sediment issue?
2 We also want to do some creek restoration work
3 on the -- there. And we can't do it because of the
4 sediment. The -- they're now requiring dredging because
5 of West Nile virus.
6 If we could vegetate and put trees up to keep
7 the -- the growth down in the creek channel, we wouldn't
8 have an issue. But we can't do that because they have to
9 dredge the sediment.
10 So what are supposed to do? I'd like to know
11 if there's recourse, and this -- and what you're
12 proposing to this tiered system that you're -- you're
13 proposing to pass.
14 Can -- can someone answer me that?
15 CHAIR YOUNG: Well, we can't answer that now.
16 What I would suggest to you -- because I think
17 those are great questions -- that you, maybe, contact
18 staff when we're not dealing with this particular item.
19 Because I don't think there's anything in the
20 order that's going to address the issues you're raising.
21 MR. BRIGGS: It does, as far as sediment.
22 CHAIR YOUNG: Well, it does --
23 MS. LEE: Well, this is --
24 CHAIR YOUNG: -- but it sounds --
25 MS. LEE: -- it's a 303(d) stream.

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1 CHAIR YOUNG: Right. But it sounds like she
2 has some specific issues with property owners receiving
3 sediment.
4 MS. LEE: Yes. And causing --
5 CHAIR YOUNG: Yeah.
6 MS. LEE: -- flooding and structural inudation
7 (phonetic), actually.
8 CHAIR YOUNG: Frances?
9 MR. BRIGGS: The order does include sediment.
10 CHAIR YOUNG: Right.
11 MS. McCHESNEY: You're -- I -- I think you're
12 correct that this isn't appropriate to answer the
13 questions, and that they should call staff or me.
14 You can call me and --
15 MS. LEE: I thought the Tier 1 had a sediment
16 component to it, to control the sediment coming off the
17 property.
18 MS. McCHESNEY: Well, all the tier -- they have
19 a sediment -- they have to do sediment management in part
20 of their farm plan, correct. Yeah.
21 MS. LEE: And they have to implement --
22 MS. McCHESNEY: Yes.
23 MS. LEE: So then it should be -- if -- if I
24 were to contact staff and say, look, they're -- they're
25 discharging sediment, they're dis -- they're not meeting

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1 their permit, then they should be able to go and talk to
2 them, to get them to do what they're supposed to do; if
3 not, then it'd be fines.
4 Isn't that what would happen?
5 CHAIR YOUNG: Do you -- do you live in the City
6 of Salinas?
7 MS. LEE: Yes.
8 CHAIR YOUNG: You do.
9 Well, you have an issue there, you know. I
10 mean, if someone is discharging sediment onto your
11 property, that's a trespass.
12 MS. McCHESNEY: Well, you know, I don't --
13 CHAIR YOUNG: It would --
14 MS. McCHESNEY: -- think we should give her
15 legal advice about it.
16 CHAIR YOUNG: I'm not --
17 MS. McCHESNEY: She should talk --
18 CHAIR YOUNG: No. It's --
19 MS. McCHESNEY: -- to the staff. And see if
20 they can address the problem.
21 MS. LEE: But I thought it'd be tied into
22 this --
23 CHAIR YOUNG: Yeah. But I don't --
24 MS. McCHESNEY: You've made your comment. And
25 we really have to move on. But you can talk to staff to

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1 see what your particular issue is. And if --
2 MS. LEE: It's -- it's doing two things:
3 Structural damage preventing restoration for recreational
4 and habitat purposes.
5 CHAIR YOUNG: Right. You should talk to staff,
6 though. And they should -- they can talk to you about
7 that.
8 We just can't get into a individual solution
9 right here to this. But it's a legitimate problem.
10 I don't want to de - minimize that by anything
11 I've said. But -- and -- and who knows what's going to
12 happen with this permit, or what it's going to look like
13 and whether it's going to take care of the issues that's
14 -- that are going to satisfy you.
15 That I don't know, either, at this point. So
16 -- but talk to staff after this meeting. And they can
17 help you more directly.
18 Okay. Next.
19 MS. BENNETT: Good evening. I'm just here
20 because I care. And --
21 CHAIR YOUNG: Pardon me.
22 MS. BENNETT: My name is Joan Bennett --
23 CHAIR YOUNG: Okay.
24 MS. BENNETT: -- from Salinas.
25 And I like to eat. So I like the farmers. But

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1 everybody here -- what a monumental task.
2 You know, we're -- I've been told that there's
3 supposed to cover crop all around us in Salinas. I've
4 seen two farms with cover crop. If we can't even get the
5 people to put the cover crop, how are you going to solve
6 this issue?
7 But, anyway, think about this: The Salinas
8 River. We have these rubber dams so that we can collect
9 water and use that water to irrigate. But then there's
10 other areas of the Salinas River where we don't have the
11 dam because the water is so polluted, they won't let it
12 go into the rubber dam area and it has to go into the
13 river, so it goes into the bay.
14 Well, if I had 100 trucks of polluted water and
15 sprayed it on a farmer's property, I would get thrown in
16 jail or fined. If I did the same thing and took it to
17 the bay and sprayed it in the bay, I would get thrown in
18 jail or fined.
19 We all want to have a winning situation. I'm
20 just saying, please, maybe somebody should start thinking
21 with their heart a little bit and not just their
22 pocketbook.
23 Think of a little scenario. Your child is
24 dying from cancer. We know that the -- the children and
25 the senior people, they're more susceptible to

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1 carcinogenic substances.
2 This diazinon, I -- I've heard that 83 percent
3 is used in the Salinas Valley, out of the entire state of
4 California. Well, that's a lot of carcinogenic
5 substances.
6 I'm not saying this farm's doing it, that
7 farm's doing it. I'm just saying, this is an issue.
8 We're all trying to resolve it.
9 But just think, if your son looked at you and
10 said, Dad, I'm 10, my sister's 4, I don't want any more
11 chemotherapy because I'm dying? And they say this is --
12 this is why it's happening. Can't you do something
13 better, so maybe my sister won't die?
14 So I'm just saying, when you're thinking about
15 all this and you're -- you're figuring, okay, how much
16 money, how much profit I'm making, are you really making
17 that much profit, if your child is dying.
18 Thank you.
19 CHAIR YOUNG: Thank you, Mrs. Bennett, for your
20 comments.
21 MS. WARD: My name is Elizabeth Ward. I
22 appreciate the chance to speak. I live in Monterey.
23 We live in a free market, but not a
24 free-for-all. The public has the right to set conditions
25 for use of shared resources, like water.

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1 And growers have the choice of whether and what
2 to grow, given the conditions set. In the end, the cost
3 of monitoring is borne by the public through free market
4 prices. And that is a cost I'm willing to bear for
5 health.
6 Stopping the public from deciding how shared
7 water is to be protected is as repressive as stopping
8 farmers from choosing what to grow.
9 The farm lobbyists working to weaken the draft
10 standards to a level where there's no individual
11 reporting or progress milestones, would gut the public's
12 ability to protect public health.
13 Without individual progress, there can be no
14 collective progress.
15 I support working with farmers to ameliorate
16 the financial and logistical impact of testing, but I
17 cannot support reliance on the creators of toxicity,
18 themselves, to investigate their own impacts.
19 Please stand up for taxpayers by supporting our
20 right to set conditions for health and independently
21 monitor compliance by the largest-scale users of shared
22 water.
23 You start with the large-scale users. If you
24 find that a lot of the impact is not done by them, then
25 you go to the smaller scale. But you got to start

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1 somewhere.
2 If the feedback today is dominated by large
3 farm families and corporations, instead of individuals,
4 like myself, keep in mind that they are effectively paid
5 millions of future dollars for every public health
6 concession they can wrest from you today.
7 I, for missing a whole day's worth of work, I'm
8 out \$800 instantly. But it's worth it to me, and I'd do
9 it again, because the health of children and the health
10 of the marine life that floats our tourism economy is
11 worth every penny to me.
12 I beg of you to stand behind monitoring and
13 reporting of nitrates and any toxin suspected of
14 affecting the health of communities larger than 100
15 people, and I specifically ask you to go back to the
16 draft standards prior, two years ago, that had a lot more
17 chemicals for monitoring.
18 And I ask you to add those back. And I ask you
19 to make a place for citizens, who are affected, to get in
20 the system and ask for monitoring of specific chemicals
21 that they suspect.
22 Thank you for listening. That -- I'm done.
23 CHAIR YOUNG: Thank you for your comments, Ms.
24 Ward.
25 MS. GUZMAN: Good afternoon. My name is Martha

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1 Guzman. And I work with the California Rural Legal
2 Assistance Foundation.
3 And I wanted to speak on behalf of some of the
4 communities I've had the privilege of working with in the
5 past 10 years or so, and some of the folks that were here
6 today, but they couldn't wait around, and other folks
7 work.
8 One was mentioned earlier today, Chualar, Camp
9 Jimenez, Campora, San Gerardo, San Lucas. And San Lucas
10 -- and these are communities that are groundwater-
11 dependent. They can afford one well, and struggle for
12 the financing of additional wells because, frankly, they
13 don't have the option of much more than drilling a little
14 deeper.
15 There is actually more than just a drinking
16 water situation that is impacted by not having water. In
17 San Lucas, there's an affordable housing project that is
18 being held up because of the water situation.
19 So it's not just drinking water and health
20 impacts. It's actually, you know, habitability. And
21 having people have decent housing, is a big piece of
22 this, as well.
23 I want to mention -- more of my comments were
24 on the nitrates. But I will say that we are very
25 concerned. Although, we agree that diazinon and

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1 chlorpyrifos are some of the worst acting pesticides,
2 we're very concerned with the swap effect, if you will.
3 So we do prefer the February 2010 proposal for
4 that, and other, reasons.
5 Returning to the nitrate situation on these
6 communities -- and it's really, you know, hard to explain
7 to people sometimes about how this is not just a simple
8 fix about drilling a -- a new well.
9 Sometimes it is. And that lasts for about 5 to
10 10 years. And sometimes you have to go really far out
11 and put in a big pipeline.
12 So one of the clear solutions that is in this
13 proposal -- and maybe it is for the long term -- is the
14 nitrogen management plans and giving farmers the tools to
15 know, you know, how -- how overcompensating is sometimes
16 not even cost effective for them or not necessarily
17 yields anything -- well, that's probably not true.
18 But the point being is that they could have
19 this more efficient tool. And you can go about it two
20 ways.
21 I think Steve was recommending that it go into
22 Tier 3. But you could conversely require everyone from
23 Tier 2 to having these nutrient management plans.
24 And it's something that is so basic from our
25 perspective, to have a nutrient management plan, that we

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1 don't think it -- it's -- you know, some of the other
2 triggers, other than really having this trigger
3 universally for Tier 2 and Tier 3, especially, because
4 we're concerned about how the swapping will work, and how
5 a farmer will move from one tier to the other.
6 And finally, something that has been loosely
7 mentioned is -- is really addressing this drinking water
8 problem now and having some way that this order is going
9 to provide for that mitigation today.
10 So that in the interim of 20, 50 or a hundred
11 years, when we can, once again, drill into a well without
12 treatment, you actually have an alternative for these
13 communities today. I mean, you wouldn't need this
14 regulation if people could drink from their groundwater
15 wells.
16 So we really hope that the industry could
17 support us in that and really focusing on a solution for
18 potable water today.
19 CHAIR YOUNG: Thank you for your comments.
20 REV. RAMSDEN: Good afternoon. I'm Reverend
21 Lindi Ramsden. I'm the senior minister and executive
22 director of the Unitarian Universalist Legislative
23 Ministry in California.
24 And, since I don't think I'll be able to make
25 it on the day of prayer, to your meeting, I will at least

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1 share with you a cartoon about Moses.
2 There's a cartoon with Moses, and he's looking
3 at the burning bush. And in his hand is a fire
4 extinguisher. And the -- the comment at the bottom says:
5 Moses blows the job interview.
6 Moses blows the job interview. You all here,
7 and those in this valley and all along the Central Coast,
8 in a certain way, have been called into a moment in
9 history, where we're facing climate change; where we're
10 looking at the human right to water; where we're seeing
11 the difficulties that farmers face, and the terrible
12 problems faced by the communities that don't have access
13 to safe, affordable water.
14 And you are being asked in your regulatory
15 authority to step into a very, very important moment in
16 history. And an important moment in time.
17 I applaud the staff for their work, others who
18 have made their presentations, and I wish you well in
19 coming to your discernment.
20 I do want to say that, in addition to all of
21 the challenges and -- and costs that growing food in an
22 unsustainable way creates to our water systems, our
23 health, the abilities of communities to get loans,
24 there's also a cost to the fabric of community that we
25 see here; sectors torn apart, one from the other.

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1 But I think that we can't turn a blind eye to
2 what is going on. And those of us who are consumers of
3 food, need to start realizing that we have to pay a lot
4 more at the grocery store. In a sense, we've been
5 getting off cheap for what food really costs.
6 We need to be able to get the right price
7 signals from the market for those of us to seek to live
8 an ethical life, about what the actual cost is of what we
9 are buying.
10 And it's very important that those who are
11 creating waste are the ones that end up taking
12 responsibility for that waste, rather than putting the
13 costs on the lowest income members of our community.
14 Implementing strong agricultural regulations
15 will help to assure that responsible growers will not be
16 at a competitive disadvantage with those who take less
17 care to avoid polluting our water.
18 Education is important, and voluntary farm
19 plans are important, but they're not sufficient. It's
20 only through the regulation of pollution with measurable
21 outcomes, timelines and enforcement that a whole industry
22 can make the move to the next level of safety,
23 accountability and predictability.
24 Unitarian Universalists in California have been
25 active in efforts to realize the human right to water.

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1 In early March, we were privileged to accompany the
2 United Nations' independent expert on the human right to
3 water and sanitation during her mission to the United
4 States.
5 She learned about the situation in the Central
6 Coast and visited several similarly affected communities
7 in the Central Valley.
8 At the end of her mission, she gave an initial
9 report to the U.S. Government at the Lantos Commission
10 for Human Rights. She'll be giving a complete report in
11 September in Geneva.
12 Protecting drinking water from agricultural
13 runoff is, indeed, a part of realizing the human right to
14 water. And what you decide here will be felt throughout
15 California, and throughout the state -- excuse me --
16 throughout the nation and throughout the world.
17 Thank you for your efforts. We wish you well.
18 Godspeed.
19 CHAIR YOUNG: Thank you, Reverend, for your
20 comments.
21 Okay.
22 MR. OVEREEM: Mr. Chairman, members of the
23 board. My name is Eric Overeem, O-V-E-R-E-E-M.
24 I'm a licensed pest control advisor, a
25 certified crop advisor, and I've had the opportunity of

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1 working in the Salinas Valley for almost 30 years, now.
2 In my experience, there have been substantial
3 changes to the overall nutrient management, to grow some
4 of the cash crops that we do.
5 Tissue and soil tests; a quick nitress test,
6 prior to sidedress; suction lysimeters to determine
7 what's in the root zone, et cetera, et cetera, I think
8 these have all gone a long ways to improve the nitrogen
9 use efficiency.
10 Also, the adoption of irrigation monitoring
11 programs and drip irrigation have significantly improved
12 the -- the irrigation use efficiency in this valley.
13 These are all practices that a -- that growers
14 have adopted to this point. And I think the Farm Bureau
15 ag alternative will continue to encourage growers to make
16 these changes on their farms.
17 I have many other things to say, but I wanted
18 to bring your attention a -- a potential conundrum with
19 one of the growers I work with. They are a -- a
20 container nursery in the Salsipuedes area of Watsonville.
21 Their operation is entirely self-contained, as
22 far as irrigation runoff and stormwater runoff, for that
23 matter. However, due to the quarantine imposed on them
24 from the light brown apple moth, they are required to
25 spray their operation with Dursban, which is a commercial

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1 formulation of chlorpyrifos.
2 This is kind of an interesting situation, where
3 they have spent the money, made the effort to come into
4 compliance with potential runoff issues; but yet, through
5 another regulatory agency, are forced to use a somewhat
6 undesirable pesticide in that situation.
7 That -- that'll summarize. That'll wrap up my
8 comments. Thank you.
9 CHAIR YOUNG: Thank you.
10 MS. CHAVEZ-WYATT: Good afternoon, Chairman
11 Young, honorable board, staff and fellow concerned
12 community members. My name is Christina Chavez-Wyatt.
13 I am past chairman of the Central Coast Young
14 Farmers and Ranchers. And I'm here today to offer you
15 the opinion of the San Benito County Chamber of Commerce,
16 as the organization's government relations committee
17 chairman.
18 The San Benito County Chamber represents 450
19 business and community members. We feel that staff's
20 proposal is unduly oppressive, discretionary, baseless,
21 fiscally and practically infeasible.
22 If implemented, it would result in the -- in
23 the removal of hundreds of acres from production of our
24 county alone, not to mention the increased production
25 costs and resulting job losses. And the lost ability to

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1 compete with foreign imports.
2 We understand staff's intentions to protect
3 water resources.
4 However, the proposal is not based on
5 scientific standards; contains inadequate discretion on
6 best management practices to meet goals; is devoid of
7 necessary metrics to analyze impacts post-implementation;
8 and is not amenable to alteration or modification in the
9 event of ineffectiveness.
10 We believe that the agricultural coalition
11 alternative recognizes and satisfies the aforementioned
12 concerns and is a far superior program for actual
13 monitoring, testing, treating, improving regional water
14 quality.
15 We urge you to adopt the agricultural
16 alternative and hope that you will consider a multitude
17 of individuals, agencies and businesses, who feel that
18 the alternative is a superior and effective means of
19 improving water -- water quality.
20 Thank you.
21 CHAIR YOUNG: Thank you for your comments.
22 MS. KAY: My name is Margie Kay. And I live
23 near the Elkhorn Slough.
24 As a volunteer, who attends many meetings on
25 water supply and water quality, I keep asking: How much

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1 will it cost to clean up, and who will pay? Who will pay
2 the public health costs? How many San Gerardos are
3 there?
4 I was invited a few years ago to join Salinas
5 Valley farmworkers and health care providers in a water
6 quality seminar, to learn more about it. From that, many
7 of us made appointments to meet two county supervisors;
8 Fernando Armenta and Simon Salinas, separately, and we
9 also met with Assemblywoman Ana Caballero.
10 It was obvious to us that the assemblywoman and
11 Supervisor Fernando Armenta did not understand the issues
12 or what was needed to get the water better. Simon
13 Salinas advised us to go to you.
14 Here we are. I support the Monterey County
15 Coastkeepers and Environmental Justice Coalition for
16 Water comments. I support regulations to protect human
17 health and the environment and that will be strong enough
18 to restore clean water.
19 Dipti said it: Keep your eye on the prize and
20 what it will take us to get us there.
21 Thank you.
22 CHAIR YOUNG: Thank you for your comments.
23 MR. MESQUITA: Good afternoon. My name is
24 Horacio Mesquita. And I'm with the San Gerardo
25 Cooperative.

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1 As you may know, there's 300 -- 350 people
2 there, 64 families, and a child care center.
3 There's -- there's been pollution there since
4 1990. There -- there's three wells that been already
5 disappeared because of high nitrates and the people there
6 were getting very, very sick; you know, skin rashes, hair
7 falling down, a lot of red spots on their skin.
8 And, until we prove to them -- you know, they
9 almost took their clothes off and prove to the
10 supervisors that there was a big problem there.
11 The supervisors put in a filtration system.
12 And as soon as they put it in, the sicknesses were gone.
13 It -- it cost around a million dollars, just
14 for the filtration system. And then, the community got a
15 grant because of the federal stimulus act of five
16 million. And it cost five million dollars just to get a
17 new -- a new well, two miles away from the community.
18 If this next well that is -- right now, that we
19 tapping in the community there -- gets polluted, then
20 there's going to be more problems.
21 I'm a farmer. I've been farming all my life.
22 And I think that we should put water first because water
23 is -- is the main source of -- of life. And we should
24 take care of the water.
25 I know that farming is hard and there's a lot

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1 of complexity on economics. But water is the fundamental
2 liquid of life.
3 So we need to take care of it. And I know you
4 guys have a -- a very hard -- you know, a very hard
5 decision that you guys got to make because there's two
6 sides.
7 And I'm in both sides. So I can -- the only
8 thing that I -- I wish, is that you guys find a good
9 solution for the well-being of humans and all the living
10 organisms that they need water.
11 Thank you.
12 CHAIR YOUNG: Well, we're -- we're going to try
13 to get to that solution.
14 MR. MESQUITA: Good.
15 CHAIR YOUNG: And everyone's input helps us to
16 try to get to that solution. So thank you for your
17 comments.
18 MR. MESQUITA: Thank you.
19 MS. ARAJO: Good afternoon, Mr. Chair, board
20 members. I'm Karen Arajo, a lifelong resident of
21 Salinas, fifth generation, native of what is now Monterey
22 County.
23 And I, like most -- most all folks in this room
24 -- I love this area, and I care about its future. No
25 one's paying me to be here today. I lost a day's work -

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1 less than \$200, but a day's work and very important,
2 nonetheless - to be here.
3 I'm so grateful to have the opportunity to
4 speak to you.
5 Someone jokingly, as I interacted with someone
6 wearing a green button here, referred to me as the enemy.
7 I checked that joke and found that he was serious.
8 I call no one here enemy. I believe everyone
9 here cares deeply about the community. We just have very
10 different strategies and fears and ways of moving
11 forward. And we're going to do this together.
12 And thank you for -- for what you're doing.
13 It's very important. I commend you on this process.
14 I support regulations that benefit a
15 sustainable economy and protect human health and the
16 environment -- maintaining the environment.
17 Tourism and ag are very important to this
18 region. A key factor to such good regulation is that we
19 must be -- they must be strong enough to restore clean
20 water for the community use; the whole community, not
21 just one distinct part or one industry. That's key.
22 It's a common denominator. And I think this
23 board, for all your great work, is moving forward. And I
24 look forward to a very sound outcome at the end of this
25 process.

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1 I serve on the planning commission for the City
2 of Salinas, the largest municipality in this region. And
3 I was saddened and shocked when an applicant came before
4 us, the water company, asking for a drill permit to go
5 down to 1500 feet.
6 In the presentation, it was noted that the
7 first two higher layers were contaminated and unusable --
8 made unusable, primarily because of nitrate
9 contamination, perfectly good water.
10 We don't have any more water coming to this
11 planet. This is it, folks. And while it is true that
12 the damage has not occurred just by folks who are here
13 trying to earn a living and do the right thing now -
14 that's true - generations of error, much of the error
15 done in ignorance and, quite frankly, much by choice for
16 short-term profit - just because that was done in the
17 past, we don't have to do it now.
18 I'm sorry that those of us who are now have to
19 shoulder this heavy burden. But it's us, folks. Your
20 job is probably a lot more cumbersome than the board that
21 came before you because this is a critical time.
22 Batter up. It's you. It's us. It's this
23 community. It's this ag community. It's these
24 environmentalists. It's these residents. It's this
25 community now that has to make this tough choice.

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1 I support the -- the plan that was put forward
2 by Mr. Shimek, the Coastkeepers and the Environmental
3 Justice Group. I loved what you did in February of 2010.
4 I thought that was great. I was so excited.
5 But I understand we're not going to get that.
6 Okay. Let's take -- let's take what we've got now. I
7 hope people will be happy with the compromises that are
8 being made.
9 Thank you very much for all of your hard work.
10 CHAIR YOUNG: Thank you for your comments.
11 MS. PEMBROKE: I want to say thank you to the
12 board and the staff. My name is Debra PEMBROKE.
13 CHAIR YOUNG: Thank you.
14 MS. PEMBROKE: I'm a member of the Unitarian
15 Universalist Fellowship of Santa Cruz County. And I'm a
16 resident of the Live Oak neighborhood of San -- in Santa
17 Cruz.
18 There were about -- there were two other
19 members of our congregation and a Monterey congregation
20 that had to leave, so I just wanted to share with you
21 that -- that they -- they had comments they wanted to
22 share but weren't able to stay.
23 So members of our two congregations and a few
24 others recently went to visit San Gerardo to learn more
25 about nitrates and how that affected their community.

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1 After that visit, I went in my dentist's
2 office. And one of the women who worked as a dental
3 assistant asked me what I'd done over the weekend. And
4 when I told her about the visit, she shared with me that
5 she lived in a winery in Gilroy that has well water.
6 Her landlord had told her that the water coming
7 out of her tap had very high levels of nitrates, and what
8 that meant was that she shouldn't give the water to
9 infants or small animals.
10 She followed that direction. And -- because
11 she didn't have children that were that small. But
12 because that was the only information she had, she
13 continued to drink the water herself, and to give it to
14 her two children.
15 When I asked her further about this, she said
16 that she knew that she had the option of buying bottled
17 water but that it was a hassle and, also, that it was
18 very expensive. She said maybe that's why I'm having all
19 these gastric problems.
20 I wanted to share this story with you because
21 when we don't take steps to protect people's water, these
22 individuals and these families often don't have the
23 information, let alone the financial resources, to be
24 able to take -- to protect their own safety.
25 That's why I'm here. I'm here to -- I want to

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1 say, specifically, I -- I support the proposal -- the
2 amendments that were put forward by the Coastkeepers and
3 the Environmental Justice Coalition for Water.
4 And I support regulation that protects humans'
5 health, the environment and will be strong enough to
6 restore clean water.
7 Thank you.
8 CHAIR YOUNG: Thank you for your comments.
9 MS. STANFORD: Good afternoon. My name is
10 Pallas Stanford. I'm another Unitarian Universalist. I
11 am the minister at the Unitarian Universalist Fellowship
12 of Santa Cruz County, which is over in Aptos.
13 I, personally, live in Watsonville.
14 And you've heard a lot of great testimony in
15 just the last few minutes. I don't want to repeat it. I
16 want to affirm it and emphasize that -- and I'm coming
17 here as a faith leader, as a religious person, but most
18 of all, just as a human being.
19 As Unitarian Universalists, we -- we -- we
20 support the right of human beings to live on this planet
21 and to enjoy the fruits of the planet together, and
22 emphasize that it is our responsibility, as a human
23 community and as a human family, to come together and
24 figure out how we're going to share our resources for the
25 benefit of all of us.

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1 the growers they oversee?
2 There are no numeric action limits or numeric
3 goals to achieve and measure effectiveness by. Third
4 party only audits once a year for implementation actions.
5 How do they determine the B & Ps they are using
6 are effective or not, since there isn't any groundwater
7 monitoring or any method for effectiveness assessment, as
8 the rest of us that are regulated have to do?
9 Reporting is done on a group basis by
10 percentage, instead of reporting who is noncompliant. So
11 they'll tell you 10 percent didn't follow the rules, but
12 you don't know who those are.
13 Tier levels should be congruent with risk
14 level, not size. The construction general permit use
15 risk levels -- I'm sorry -- the construction general
16 permit uses risk levels for construction projects.
17 And the new phase 2 permit, may be assigning
18 risk levels to watersheds. There should be similar risk
19 levels for ag.
20 Ag and your report should be -- should include
21 effectiveness assessments. Phase 1 and 2 MS4s have this
22 requirement.
23 Monitoring should be equal across the board;
24 ag, MS4s, everyone. The -- the regional water board, the
25 -- region three has a vision for watershed health. I'm

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1 not sure if it was the 2020 or -- but they have a vision
2 for watershed health.
3 And it's very difficult for those of us who are
4 already regulated. You've got industrial. You've got
5 commercial. You've got Phase 1 and Phase 2 MS4s.
6 The only loophole is ag. So you're trying to
7 have watershed health. And you get all of these great
8 programs going throughout the watershed. And you've got
9 these big holes, and they're called agriculture.
10 And I think it's just about time that we
11 leveled out the playing field and everybody had the same
12 requirements.
13 Thank you.
14 CHAIR YOUNG: Thank you for your comments.
15
16 MS. MYHRE: Good evening, afternoon, members of
17 the board. I am Ann Myhre, M-Y-H-R-E, from San Ardo.
18 Running late. I'm facilitating a meeting at
19 7:00. So I'm not too happy to be so late.
20 I have prepared some written statements for
21 you, but I want to deviate from that for a moment.
22 First, I would say that I will participate in
23 some sort of monitoring program that is cooperative, if
24 that is available.
25 I'm a very small grower. I consider myself a

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1 small operator with trees on drip. I don't think there's
2 anything I can do to improve my operation. But I would
3 appreciate an independent audit.
4 And, so far -- I mean, I don't think that's
5 going to happen from the Regional Water Quality Control
6 Board, if they think I'm in compliance.
7 So I would appreciate someone coming and
8 talking to me on my farm to tell me what I could do
9 better.
10 The second thing I would say, is I have become
11 alarmed by what the strawberry people said today because
12 I think I am now Tier 3. And I have gone along, thinking
13 that if I have 40 acres of walnuts on drip irrigation, I
14 am Tier 1.
15 But I happen to own some other property, with
16 my husband, that lease -- is leased by another operator;
17 small property. Fifty-five miles from my home, my sister
18 and I own a very, very small property with four very,
19 very small operators.
20 We do a kind of a rotation, a dry land
21 irrigated, and for one of those irrigators, I write the
22 farm plan. Okay. I'm still Tier 1.
23 It just occurred to me, that a hundred and
24 sixty miles from my home, but still in this region -- and
25 I hate to divulge this stuff in public -- I -- because I

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1 don't think it's any of your business.
2 But I own over a thousand acres of irrigated
3 property, a minority interest - a minority interest -
4 with my cousin and other family members. But that
5 probably puts my 45 acres of walnuts into Tier 3.
6 That's not fair. That is not fair. And it's
7 something you haven't been thinking about. And I don't
8 want to be burdened with it. So I don't know how that
9 happens.
10 But I will read my prepared remarks, to the
11 extent that my minutes remain.
12 For many of us who appeared before you today,
13 we are representing ourselves, paying our own way, giving
14 our own time. To help this board and staff understand
15 the impact of your actions.
16 We typically operate small acreages and we are
17 in very limited income. And we are going to be required
18 to absorb additional expenses and take on additional
19 duties without compensation, dependent upon your actions.
20 As such a person, I am responsible for farm
21 plans required by the current ag waiver program. I can
22 honestly say, that I resent the time I spend formalizing
23 these plans, because, to my way of thinking, they serve
24 absolutely no purpose.
25 That is not to say that I am not mindful of the

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1 unique characteristics of my property; that I have been
2 continuously developing and revising informal management
3 plans in my mind, since I attended my first conservation
4 meeting in 1955.
5 Certainly, water quality is among the things I
6 consider.
7 However, I oppose staff recommendations to
8 change the current plans and process. And it would be
9 helpful if this board would exercise restraint when
10 considering modifications to that expiring plan.
11 The properties I represent are not going to be
12 better managed because of these new demands.
13 Furthermore, I cannot justify additional
14 management expense. And still, under this order, it
15 seems designed to impact my operation in just that way.
16 Requiring more time, more money and the intent ultimately
17 being that it take away my historic use of this property,
18 some of which has been irrigated since 1900.
19 Would somebody like my written comments?
20 CHAIR YOUNG: Okay. Sure. Thank you for your
21 comments.
22 MS. CLARY: Thank you. My name is Jennifer
23 Clary. I'm with Clean Water Action and Clean Water Fund.
24 And I hope to stun you with my brevity.
25 I want to speak in support of the Monterey
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1 Baykeeper and Environmental Justice Coalition for Water
2 proposal.
3 And I also had a chance to listen to the -- to
4 the Farm Bureau's new proposal. Unfortunately, it -- it
5 sounded a lot like the one that they presented in
6 November. And, I think, the big -- my biggest concern is
7 groundwater.
8 I should tell you that I come from a drinking
9 water perspective. I serve on a -- on several
10 stakeholder groups representing drinking water interests.
11 And one of the stakeholder groups I've served on for
12 years is the GAMA Public Advisory Committee.
13 So I just -- just wanted to clarify a few
14 misconceptions about the GAMA database.
15 GAMA database is a collection of -- of the data
16 that several public agencies gathered. It has data from
17 drinking water supply wells, DPR data, state water board
18 monitoring wells, and it does have some data about --
19 from USGS.
20 USGS has been doing monitoring for the GAMA
21 program for several years. And one problem with that
22 monitoring program -- it's a great program, we've got
23 lots of information -- but it is voluntary. The
24 participants elect to do it.
25 So there's always been a concern that the data
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1 is going to be skewed by the fact that it's sort of a
2 self-selected group.
3 The other difficulty is one of the -- one of
4 the purposes of the GAMA program was to develop a trend
5 analysis, like: Which way is water quality going, and
6 whether we have to worry about it?
7 But, you know, between all the funding
8 problems, we never got to the trend piece of it; we're
9 just barely getting through the first set of data.
10 So I should say that I've been active in the
11 Central Valley ag waiver process. And one thing that I
12 worked with Pacific Institute on, for that process, was
13 to do a regression analysis.
14 So what we took from the GAMA data, is we took
15 wells for which we had a significant amount of data over
16 10 to 20 years. And we took a look at what the nitrate
17 concentrations were and how they -- and how they sort of
18 penciled out if you kept drawing the line.
19 And I have no idea -- I'm sure it's not
20 scientifically accurate. But it's the best we could do,
21 in the form of trend analysis.
22 And under that analysis, it looked like -- we
23 just did Kern County because it has -- it had the biggest
24 nitrate problem. And it showed that the number of wells
25 exceeding the drinking water standard would double in the
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1 next 10 years.
2 And I think that's something that we have to
3 understand as part of putting this program in, is we
4 don't just want to solve the problems we have; we want to
5 prevent the problems that are coming up.
6 And so, one way we have to do that, is we have
7 to have a strong monitoring program. And the biggest
8 shortcoming of the Farm Bureau proposal is that it
9 doesn't have that information.
10 And voluntary groundwater monitoring doesn't
11 work because it isn't going to go into the GAMA database,
12 you're not going to be able to do trend analysis.
13 And if they're concerned about information
14 getting out, that shouldn't get out, I should tell you
15 that the GAMA program doesn't reveal well location. And
16 it wouldn't reveal well location for any of the
17 monitoring done here, as well.
18 Thank you.
19 CHAIR YOUNG: Thank you. Thank you for your
20 comments.
21 MS. DAMRON: Good evening. My name is Sarah
22 Damron. And I'm speaking on behalf of the five Surfrider
23 Foundation chapters here in the region three.
24 CHAIR YOUNG: Could -- could you repeat your
25 name, again.
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1 MS. DAMRON: Sorry. Sarah Damron.
2 CHAIR YOUNG: Sarah. Okay.
3 MS. DAMRON: Thanks.
4 And I kind of foresaw this moment coming, so I
5 actually have typed statements. But I will paraphrase.
6 So, obviously, our members care about the
7 protection of coastal ocean ecosystems, which are
8 impacted by aquatic conditions, and the ability of people
9 to use and enjoy coastal waters beneficially.
10 So that's the context in which I'm making
11 comments today.
12 We really care about what's in front of us,
13 which is the continued impairment of our coastal
14 waterbodies and groundwater that's occurring by irrigated
15 agriculture as a class.
16 We realize it's, you know -- some folks are
17 doing really well, and some folks maybe aren't.
18 We do appreciate the fact that a number of
19 folks really have taken it upon themselves to make
20 improvements. But that's not why we're here today.
21 We're here because there is continued impairment of our
22 waterbodies.
23 And, specifically, waterbodies that are
24 identified as supporting other beneficial uses, such as
25 contact recreation, fishing, drinking water, these types

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1 of things, need to be protected and cleaned up to support
2 those uses.
3 So we believe those efforts need to -- to
4 prevent and remediate pollution should be implemented,
5 and in as timely a manner as possible, to support those
6 other beneficial uses.
7 We do support the change from the existing
8 waiver to the proposed waiver that does require
9 individual discharge monitoring because we do agree that
10 it will facilitate a measure of changes; both, you know,
11 what -- where are the problems, exactly, and -- and how
12 are we doing better, and let us know that, you know,
13 these management practices that we're putting into place,
14 actually are succeeding. Or maybe they're failing.
15 And we appreciate that that's included for Tier
16 3 dischargers. But we feel that this really is the, kind
17 of, a bottom rung. This is the very least amount of
18 individual discharge monitoring that should occur if
19 we're really looking to -- to solve the problem.
20 We're generally concerned that the tiering
21 criteria might be too narrow. Tier 3 is not necessarily
22 inclusive of all operations that could be significant
23 contributors of pollutants to 303(d)-listed waterbodies.
24 For example, Tier 3 errs in focusing on two
25 specific pesticides, ss opposed to considering a range of

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1 substances that cause toxicity, when toxicity is really
2 what we're seeking to eliminate here.
3 And, in doing so, we feel like -- as a number
4 of speakers on all sides have pointed out -- that people
5 are just going to switch to other pesticides. And that's
6 not what any of us, I don't think, want to do.
7 So there are a couple options. You could
8 expand Tier 3 to be more inclusive of operations that
9 discharge into 303(d)-listed waterbodies, that also
10 include the broader list of pesticides that have been
11 identified as harmful or that are causing toxicity in
12 these waterbodies.
13 Or, you could extend individual discharge
14 monitoring requirement to Tier 2. Or, we could go back
15 to the February 2010 option.
16 Just putting some things out there for you.
17 But, basically, we support what we're trying -- I think,
18 what we're all trying to do here, which is eliminate
19 toxicity, reduce pollution.
20 So, thank you for the opportunity to comment.
21 CHAIR YOUNG: Thank you for your comments.
22 MR. OMPA: Roy Ompa. I live in Hollister; farm
23 in Fresno, Merced and San Benito County.
24 CHAIR YOUNG: And that was Roy -- and the last
25 name?

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1 MR. OMPA: Yeah.
2 CHAIR YOUNG: Your last name, sir?
3 MR. OMPA: O-M-P-A.
4 I would like to make a couple of proposals.
5 Number one, if all these people that have been
6 here speaking today, that eat the -- the chow that we
7 produce, think that we're doing such a bad job keeping
8 them fed, I suggest that they all be -- they're not
9 calling this a tax. They're calling it a fee.
10 So I think they all should pay a fee to be sure
11 that we can afford to keep the water the way they think
12 it should be. I'd like to remind them, also, that a lot
13 of our nitrogen comes from thunder showers, from God's
14 domain, that nobody's talked about.
15 Also, this watershed starts in San Benito
16 County, in the San Benito River, Pajaros, about 28 miles
17 west of Coalingo (phonetic). And between here and
18 Coalingo -- and I'll be nice -- I'll say feces from the
19 cattle and the horses, the deer and the pigs, create a
20 hell of a lot of nitrogen. And water runs downhill, and
21 we're on the bottom.
22 And nobody's addressed that. And that water,
23 basically, on light years, what little -- when the river
24 does run, percolates down into the aquifers, which are
25 fed from Salinas west. They don't get much percolation

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1 above that.
2 And that would be my recommendation; that all
3 these people, who've got all these good ideas in town,
4 contribute to see that we have this done.
5 The other thing is, there's two other possible
6 solutions. In Fresno County, where I farm, these -- part
7 of these same people, the environmentalists and the fish
8 and game, are proposing within the next 12 years to take
9 out 1.5 million acres out of production. And put it back
10 in habitat.
11 So if we took 1.5 million acres out of
12 production here in Salinas, put it back to habitat, their
13 water would be beautiful. That would be one proposal I'd
14 make.
15 And the other one is, that nobody's mentioned
16 -- only that some sea otter ate some moss out there and
17 died -- that's because the sea otter have ate all the
18 clams and abalone there is for 50 miles up and down the
19 coast.
20 Because I'm 84 years old, and I used to come
21 over here clamming all the time and catch some beautiful
22 six and eight-inch clams, abalone. There's none around.
23 The sea otters ate them all.
24 So I think that somebody on that committee
25 should check into see how much influence Monterey Bay

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1 Aquarium and that lab -- whatever they call it at Moss
2 Landing -- is input -- is having in -- inputting it in to
3 blame the farmers for putting all this nitrogen in the
4 water.
5 They don't want it in there. And they're
6 passing it off as screwing up your drinking water. If
7 the truth was really found out, you'd find out that they
8 have a big input in what's going on here today.
9 Thank you very much.
10 CHAIR YOUNG: Sir, I didn't -- sir -- sir?
11 I didn't catch your -- over here.
12 MR. OMPA: Well, it don't make any difference.
13 I'm alive and well. Thank you.
14 CHAIR YOUNG: No. Wait -- wait a minute.
15 Okay.
16 MR. BRIGGS: I think we got it close enough.
17 CHAIR YOUNG: Okay.
18 MR. BRIGGS: And we'll remember him.
19 CHAIR YOUNG: I just wanted his last name.
20 That's all.
21 MS. MC CANN: I heard O-M-P-A.
22 CHAIR YOUNG: Okay. Okay.
23 Last speaker. Go ahead.
24 MR. ALLEY: Thank you, Mr. Chairman. My name
25 is Nathan Alley, just like the bowling alley.

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1 Excuse me. I'm a little congested.
2 I'm with the Environmental Defense Center. And
3 I'm basically exactly who we all want to see at 6:00 at
4 night. I'm an attorney about to talk about process.
5 And I can guarantee that no one else has
6 brought up these points today. So at least it's a little
7 refreshing.
8 The current order -- the current, existing
9 agricultural waiver, R3 2010-0040, expires on March 31st.
10 The section of the water code, 13269 subsection F, that
11 refers to renewal of conditional waivers, says that those
12 decisions must be made at a hearing; which means that if
13 you continue today's hearing, you cannot make that
14 decision probably prior to March 31st, which means, that,
15 defacto, this order is going to expire.
16 Now, I've also heard a -- a consideration of a
17 -- a, quote-unquote, administrative renewal of this
18 process. And I refer back to the water code. Section
19 13223 authorizes your board to delegate some authority to
20 the executive officer. However, it contains several
21 enumerated exceptions.
22 One, is that the executive officer may not
23 promulgate any regulation. And I think a lot of these
24 folks would be surprised to hear someone say that the ag
25 waiver is not a regulation.

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1 In fact, the government code, which defines
2 such thing, says that a regulation is essentially any
3 order that comes from an agency, which implements the
4 laws that that agency is tasked to enforce.
5 So by that plain definition, the waiver is, in
6 fact, regulation. Even if you were to operate under the
7 fiction that it's not, the second enumerated exception
8 says that the executive officer may not issue, modify or
9 revoke any waste discharge requirement.
10 Now, it's nonsensical to me that the executive
11 officer is prohibited from doing those things and, yet,
12 has some authority to waive a waste discharge
13 requirement.
14 And that's exactly what a conditional waiver
15 is. It's a waiver of waste discharge requirements. I've
16 seen these green buttons that says, waive -- or don't
17 waive agriculture. If you take that literally, that
18 means everyone has to get a WDR.
19 So that doesn't really make sense to me.
20 Anyway, bottom line is, the only way for you to
21 renew this waiver is for your board to constitute a full
22 quorum and make a decision at a hearing, after notice.
23 Now, what's the import of this? Well, after
24 March 31st, there's no more waiver, there's no more
25 waiver of waste discharge requirements.

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